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Federal Register

6–13–01 Wednesday
Vol. 66 No. 114 June 13, 2001
Pages 31835–32206

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Contents

Federal Register

Vol. 66, No. 114

Wednesday, June 13, 2001

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31921–31925

Agricultural Marketing Service
PROPOSED RULES
Almonds grown in—
California, 31850

Agriculture Department
See Agricultural Marketing Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Air Force Department
RULES
Environmental protection:
Environmental impact analysis process; correction, 31976

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 31887–31888

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31925–31926
Grants and cooperative agreements; availability, etc.:
Healthy Aging National Support Programs, 31926–31928
National Comprehensive Cancer Control Program, 31928–31933
Scientifically-proven asthma interventions; implementation and replication, 31933–31935

Coast Guard
RULES
Organization, functions, and authority delegations:
Director, Great Lakes Pilotage; right to appeal Director's decisions to Commandant, 31842–31844
Ports and waterways safety:
Ottawa River, Toledo, OH; safety zone, 31841–31842
PROPOSED RULES
Ports and waterways safety:
San Diego Bay, CA—
Naval Amphibious Base; security zone, 31872–31873
Naval Supply Center Pier; security zone, 31870–31871
Regattas and marine parades:
Patapsco River, MD; fireworks display, 31868–31870
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31961–31962

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Air Force Department

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31896–31897
Submission for OMB review; comment request, 31897
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Alternative Financing Program, 32167–32170

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Pantex Plant, TX, 31898
Natural gas exportation and importation:
Mirant Americas Energy Marketing, L.P., et al., 31898–31899

Environmental Protection Agency
RULES
Air programs:
Continuous emissions monitoring; CFR correction, 31842
Radiation protection programs:
Yucca Mountain, NV; public health and environmental radiation protection standards, 32073–32135
PROPOSED RULES
Air programs:
Federal Nitrogen Oxides Budget Trading Program, emissions monitoring provisions, permits regulation provisions, and appeal procedures; revisions, 31977–32049
Air quality planning purposes; designation of areas:
California, 31873–31878
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31913
Submission for OMB review; comment request, 31913–31915
Meetings:
FIFRA Scientific Advisory Panel, 31915–31916
National Environmental Education Advisory Council, 31917
Pesticide registration, cancellation, etc.:
Warwick International, Ltd., et al., 31917–31919

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 31836–31837
Dornier, 31835–31836
Learjet, 31837–31839
NOTICES
Exemption petitions; summary and disposition, 31962–31964

Meetings:
Fire and Cabin Safety Research International Conference, 31964–31965
Passenger facility charges; applications, etc.:
Dallas/Fort Worth Airport Board, TX, et al., 31965–31971
Juneau International Airport, AK, 31972
Houghton County Memorial Airport, MI, 31971
Tri-State Airport, WV, 31972–31973

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Commercial mobile radio services—
Wireless enhanced 911 compatibility; call back capability, 31878–31883

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 31919

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 31902–31907
Meetings; Sunshine Act, 31907–31909
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 31899
Discovery Gas Transmission LLC, 31899–31900
Gas Research Institute, 31900
Kern River Gas Transmission Co., 31900–31901
National Fuel Gas Supply Corp., 31901
Natural Gas Pipeline Co. of America, 31907
Williams Gas Pipelines Central, Inc., 31902
Williston Basin Interstate Pipeline Co., 31902

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Bellevue, King County, WA; rescission, 31973
Suffolk County, NY, 31973–31974

Federal Maritime Commission
NOTICES
Agreements filed, etc., 31919–31920
Ocean transportation intermediary licenses:
A.R. Savage & Son, Inc., et al., 31920
Seahawk Logitech, Inc., et al., 31920–31921

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 31921

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Otay tarplant, 32051–32071
NOTICES
Environmental statements; availability, etc.:
Survival enhancement permits—
Schaus swallowtail butterfly; Monroe County, FL, 31944–31946
Virgin River Resource Management and Recovery Program, UT; Federal agency participation, 31946–31947

Food and Drug Administration
RULES
Food additives:
Acidified soldium chlorite solutions, 31840–31841
NOTICES
Committees; establishment, renewal, termination, etc.:
Medical Devices Advisory Committee—
Public advisory panels or committees; nonvoting consumer and industry interests representatives, 31935–31936
Food for human consumption:
Food Chemicals Codex; 4th Edition—
Monographs, test procedures, and test solutions; revisions; comment request, 31936–31938
Meetings:
Transmissible Spongiform Encephalopathies Advisory Committee, 31938
Reports and guidance documents; availability, etc.:
Animal drug residues identity confirmation; mass spectrometry use, 31938–31939

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Southern Star Stockyard, AL, et al., 31886

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
RULES
Medicare:
Hospital inpatient payments and graduate medical education rates and costs; Benefits Improvement and Protection Act of 2000 provisions, 32171–32196
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31939–31940

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31940
Meetings:
Migrant Health National Advisory Council, 31940–31941

Housing and Urban Development Department
PROPOSED RULES
Low income housing:
Housing assistance payments (Section 8)—
Downpayment assistance grants and streamlining amendments, 32197–32202

Immigration and Naturalization Service
RULES
Nationality:
Children born outside United States; citizen certificate applications, 32137–32147

NOTICES
Agency information collection activities:
Proposed collection; comment request, 32147–32166

Indian Affairs Bureau
RULES
Land and water:
Land held in trust for benefit of Indian Tribes and individual Indians; title acquisition
Effective date delay; correction, 31976

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 31941–31944

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Annual accounting periods; changes, 31850–31868

International Trade Administration
NOTICES
Antidumping:
Polyethylene terephthalate film, sheet, and strip from—
India and Taiwan, 31888–31892
Antidumping and countervailing duties:
Hot-rolled carbon steel flat products from—
Thailand and South Africa, 31888
Countervailing duties:
Polyethylene terephthalate film, sheet, and strip from—
India, 31892–31894
Export trade certificates of review, 31894–31896

International Trade Commission
NOTICES
Import investigations:
Honey from—
Argentina and China, 31948–31950

Justice Department
See Immigration and Naturalization Service

Land Management Bureau
NOTICES
Public land orders:
Colorado, 31947
Wyoming, 31948

National Council on Disability
NOTICES
Meetings; Sunshine Act, 31950

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Child restraint anchorage systems; petition denied, 31883–31885
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31974
Submission for OMB review; comment request, 31974–31975

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Steller sea lion protection measures, 31845–31849
Yellowfin sole, 31849
Atlantic highly migratory species—
Atlantic bluefin tuna, 31844–31845
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 31896

National Park Service
NOTICES
Meetings:
San Francisco National Historical Park Advisory Commission, 31948

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Scott's Pond Watershed Protection Project, ID, 31886
Environmental statements; notice of intent:
Hubbard and Murphree Creeks Watershed, MS, 31886–31887
Field office technical guides; changes:
South Dakota, 31887
Washington, 31887

Peace Corps
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31950–31951

Presidential Documents
PROCLAMATIONS
Special observances:
Great Outdoors Week (Proc. 7450), 32203–32206

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 31951

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
Director, Market Regulation Division, 31839–31840
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31951–31952
Submission for OMB review; comment request, 31952
Investment Company Act of 1940:
Exemption applications—
AB Funds Trust et al., 31953–31960
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 31960–31961
Applications, hearings, determinations, etc.:
Nasdaq Stock Market, Inc., 31952–31953
NOTICES
Meetings:
National Regulatory Fairness Board, 31961

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Railway Co., 31975

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Western Area Power Administration
NOTICES
Path 15 transmission constraints, intent to relieve; transmission expansion; statements of interest, 31909–31910
Salt Lake City Area Integrated Projects; power allocation; post-2004 resource pool, 31910–31913

Separate Parts In This Issue

Part II
Environmental Protection Agency , 31977–32049

Part III
Department of Interior, Fish and Wildlife Service, 32051–32071

Part IV
Environmental Protection Agency, 32073–32135

Part V
Department of Justice, Immigration and Naturalizaton Service, 32137–32166

Part VI
Department of Education, 32167–32170

Part VII
Department of Health and Human Services, Health Care Financing Adminstration, 32171–32196

Part VIII
Department of Housing and Urban Development, 32197–32202

Part IX
The President, 32203–32206

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
7450.....32205

7 CFR
Proposed Rules:
981.....31850

8 CFR
103.....32138
310.....32138
320.....32138
322.....32138
334.....32138
337.....32138
338.....32138
341.....32138

14 CFR
39 (3 documents) 31835, 31836, 31837

17 CFR
200.....31839

21 CFR
173.....31840

24 CFR
Proposed Rules:
982.....32198

25 CFR
151.....31976

26 CFR
Proposed Rules:
1.....31850
5c.....31850
5f.....31850
18.....31850
301.....31850

32 CFR
989.....31976

33 CFR
165.....31841
Proposed Rules:
100.....31868
165 (2 documents) 31870, 31872

40 CFR
75.....31842
197.....32074
Proposed Rules:
72.....31978
75.....31978
78.....31978
81.....31873
97.....31978

42 CFR
410.....32172
412.....32172
413.....32172
485.....32172

46 CFR
1.....31842

47 CFR
Proposed Rules:
20.....31878

49 CFR
Proposed Rules:
571.....31883

50 CFR
635.....31844
679 (2 documents) 31845, 31849
Proposed Rules:
17.....32052

Rules and Regulations

Federal Register

Vol. 66, No. 114

Wednesday, June 13, 2001

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–386–AD; Amendment 39–12259; AD 2001–12–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that requires 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 airplane's flaps, roll spoilers, inner ground spoilers, and nose wheel steering. This action is intended to address the identified unsafe condition.

DATES: Effective July 18, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes was published in the **Federal Register** on March 29, 2001 (66 FR 17099). That action proposed to 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.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required 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 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 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 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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–12–04 Dornier Luftfahrt Gmbh: Amendment 39–12259. 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 sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328J–29–040, dated June 8, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

Effective Date

(e) This amendment becomes effective on July 18, 2001.

Issued in Renton, Washington, on June 4, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14532 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–268–AD; Amendment 39–12258; AD 2001–12–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–300 series airplanes, that requires a one-time general visual inspection to find chafing and determine adequate clearance of certain wire bundles in the ceiling panel near the main passenger door, and corrective actions. The actions specified by this AD are intended to prevent damage to the wires in the bundles due to contact between the bundles and the adjacent ceiling support bracket. Such damage could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 18, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1279; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–300 series airplanes was published in the **Federal Register** on March 9, 2001 (66 FR 14094). That action proposed to require a one-time general visual inspection to find chafing and determine adequate clearance of certain wire bundles in the ceiling panel near the main passenger door, and corrective actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 135 Model 767–300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,180, or $60 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required repair or replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repair or replacement required by this AD on U.S. operators is estimated to be $6,360, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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 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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–12–03 Boeing: Amendment 39–12258. Docket 2000–NM–268–AD.

Applicability: Model 767–300 series airplanes, as listed in Boeing Alert Service Bulletin 767–33A0085, Revision 2, dated December 7, 2000, 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 damage to the wires in certain wire bundles due to contact between the bundles and the adjacent ceiling support bracket, which could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane, accomplish the following:

One-Time Inspection/Corrective Actions

(a) Accomplish the requirements in paragraphs (a)(1) and (a)(2) of this AD, as applicable, at the times specified.

(1) Within 6 months after the effective date of this AD: Do a one-time general visual inspection to find chafing and determine adequate clearance of the wire bundles above the F4/G2 galley, per Figure 1 or Figure 3, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–33A0085, Revision 2, dated December 7, 2000.

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 find 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.''

(2) If chafing and/or inadequate clearance is found: Before further flight, repair or replace damaged wires in the wire bundles; install a bracket assembly on the wire bundle support bracket; install nut spacer plates; and re-route the wire bundles away from the ceiling support bracket, as applicable, as specified by and per Figure 2 or Figure 3, as applicable, of the Accomplishment Instructions of the alert service bulletin.

Note 3: Accomplishment of the one-time inspection and corrective actions before the effective date of this AD per Boeing Alert Service Bulletin 767–33A0085, dated May 11, 2000; or Revision 1, dated August 31, 2000, is considered acceptable for compliance with 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, 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

(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.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–33A0085, Revision 2, dated December 7, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 18, 2001.

Issued in Renton, Washington, on June 4, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14531 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–128–AD; Amendment 39–12257; AD 2001–12–02]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 55 Series Airplanes and Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 55 series airplanes and Model 60 airplanes, that requires replacement of the brake valve adjustment screw with a new improved screw, and for certain airplanes, it would also require installation of a new brake valve lever stop. The actions specified by this AD are intended to prevent bottoming of the valve components before contact of the brake valve lever with the stop, which

could result in loss of all hydraulic fluid and consequent loss of normal braking. This action is intended to address the identified unsafe condition.

DATES: Effective July 18, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 55 series airplanes and Model 60 airplanes was published in the **Federal Register** on March 19, 2001 (66 FR 15362). That action proposed to require replacement of the brake valve adjustment screw with a new improved screw; and for certain airplanes, that action also proposed to require installation of a new brake valve lever stop.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 331 Model 55 series airplanes and Model 60 airplanes of the affected design in the worldwide fleet. The FAA estimates that 285 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,368 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $948,480, or $3,328 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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 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 action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–12–02 Learjet: Amendment 39–12257. Docket 2000–NM–128–AD.

Applicability: Model 55 series airplanes, serial numbers 55–003 through 55–147 inclusive, and Model 60 airplanes, serial numbers 60–002 through 60–189 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 bottoming of the valve components before contact of the brake valve lever with the stop, which could result in loss of all hydraulic fluid and consequent loss of normal braking; accomplish the following:

Replacement of Brake Valve Lever Stop Switch

(a) Within 300 flight hours or one year after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Learjet Model 60 airplanes having serial numbers 60–002 through 60–093 inclusive, and 60–095 through 60–188 inclusive: Replace the existing brake valve lever stop switch with a new brake valve lever stop switch, and replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 60–32–10, Revision 1, dated June 22, 2000.

(2) For Learjet Model 60 airplanes having serial number 60–094 or 60–189: Replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 60–32–10, Revision 1, dated June 22, 2000.

(3) For Learjet Model 55 series airplanes having serial numbers 55–003 through 55–147 inclusive: Replace the existing brake valve lever stop with a new brake valve lever stop, and replace the brake valve adjustment screws with new improved screws, per Bombardier Service Bulletin 55–32–14, dated November 9, 1999.

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, 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 2: 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.

Incorporation by Reference

(d) The actions shall be done in accordance with Bombardier Service Bulletin 60–32–10, Revision 1, dated June 22, 2000; and Bombardier Service Bulletin 55–32–14, dated November 9, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected 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, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on July 18, 2001.

Issued in Renton, Washington, on June 4, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14530 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–44397]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rules to delegate to the Director of the Division of Market Regulation authority to publish notice of a filing of an application for registration as a national securities exchange, or for exemption from registration based on limited volume, and amendments to such applications filed under section 6 of the Securities Exchange Act of 1934. This delegation will facilitate and expedite the process of exchange registration and exemption from registration based on limited volume. This delegation will not include the authority to approve an application for registration as a national securities exchange or exemption from registration based on limited volume.

EFFECTIVE DATE: June 13, 2001.

FOR FURTHER INFORMATION CONTACT: Rebekah Liu, Special Counsel, at (202) 942–0133; Susie Cho, Attorney, at (202) 942–0748, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') has adopted an amendment to Rule 30–3 of its Rules of Organization and Program Management governing Delegations of Authority to the Director of the Division of Market Regulation (''Director'').[1] The amendment adds new paragraph (a)(73) to Rule 30–3 authorizing the Director to publish notice of a filing of an application for registration as a national securities exchange, or for exemption from registration as a national securities exchange based on limited volume, and amendments to such applications filed under section 6 of the Securities Exchange Act of 1934 (''Exchange Act'').[2]

Section 6(a) of the Exchange Act provides that an exchange may be registered as a national securities exchange ''by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' [3] Rule 6a–1 [4] specifies that an application for registration as a national securities exchange, or for exemption from such registration based on limited volume, shall be filed on Form 1.[5]

The delegation of authority to the Director to publish a notice of filing of an application for registration, or an exemption from registration based on limited volume, and amendments to such applications filed pursuant to Rule 6a–1, is intended to conserve Commission resources by permitting Division staff to review and publish for comment a notice of filing of an application and any amendments to such applications on a more expedited basis. The Division has received several applications for registration as a national securities exchange which, after careful review by Division staff, must be published for comment. In addition, the Division anticipates that, when an application for registration as a national securities exchange or exemption from registration based on limited volume is filed and published for comment, there will be significant comment on the application and amendments to the application will be necessary. Granting the Division delegated authority to publish amendments will provide the Division with greater flexibility to respond to any commenters' concerns, and may expedite the process of publishing amendments to the Form 1. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. The Commission retains authority to approve an application for exchange registration or exemption from exchange registration based on limited volume.

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedures Act,[6] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[1] 17 CFR 200.30–3.

[2] 15 U.S.C. 78f.

[3] 15 U.S.C. 78f(a).

[4] 17 CFR 240.6a–1.

[5] 17 CFR 249.1.

[6] 5 U.S.C. 553(b)(A).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(73) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(73) Pursuant to section 6(a) of the Act, 15 U.S.C. 78f(a), and Rule 6a–1 thereunder, 17 CFR 240.6a–1:

(i) To publish a notice of filing of an application for registration as a national securities exchange, or for exemption from registration based on limited volume; and

(ii) To publish amendments to an application for registration as a national securities exchange, or for exemption from registration based on limited volume.

* * * * *

Dated: June 7, 2001.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–14830 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–1488]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on processed, comminuted or formed meat food products (unless precluded by United States Department of Agriculture's standards of identity) prior to packaging of the food for commercial purposes in accordance with current industry standards of good manufacturing practice. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective June 13, 2001. Submit written objections and requests for a hearing by July 13, 2001.

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

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 11, 2000 (65 FR 54855), FDA announced that a food additive petition (FAP 0A4724) had been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposed to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solutions* (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on processed, comminuted, or formed meat food products prior to packaging of the food.

FDA has evaluated data in the petition and other relevant material. FDA is approving the use of acidified sodium chlorite solutions on processed, comminuted or formed meat food products, unless such use is precluded by standards of identity in 9 CFR part 319, prior to packaging of the food for commercial purposes. For example, this acidified sodium chlorite solution is not permitted to be added to ground beef under 9 CFR 319.15. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

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

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

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by July 13, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

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

2. Section 173.325 is amended by redesignating paragraph (f) as paragraph (g) and by adding new paragraph (f) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(f) The additive is used as an antimicrobial agent on processed, comminuted or formed meat food products (unless precluded by standards of identity in 9 CFR part 319) prior to packaging of the food for commercial purposes, in accordance with current industry standards of good manufacturing practice. Applied as a dip or spray, the additive is used at levels that result in sodium chlorite concentrations of 500 to 1200 ppm, in combination with any GRAS acid at levels sufficient to achieve a pH of 2.5 to 2.9.

* * * * *

Dated: June 5, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–14811 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–036]

RIN 2115–AA97

Safety Zone—Ottawa River, Toledo, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Ottawa River, Toledo, Ohio. This zone restricts the entry of vessels into the area designated for the June 23, 2001, Summerfest fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 6:30 p.m. until 11 p.m. on June 23, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–01–036] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio, 43604 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule it effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This temporary rule is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Toledo's Summerfest Fireworks. The fireworks display will occur between 6:30 p.m. and 11 p.m. on June 23rd.

This safety zone will encompass all waters and the adjacent shoreline of the Ottawa River, Toledo, Ohio, bounded by the arc of a circle with a 560-foot radius with its center in approximate position 41° 43.21 N, 083° 28.46 W. The fireworks will be launched off the southeast end of the Summit Street Bridge. The Captain of the Port Toledo or his designated on scene representative have the authority to terminate the event.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the historical lack of vessel traffic during this time of year.

Small Entities

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

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

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only a few hours for one event and vessel traffic can pass safely around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Toledo (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T09–915 to read as follows:

§ 165.T09–915 Safety zone: Ottawa River, Toledo, Ohio.

(a) *Location:* All waters and the adjacent shoreline of the Ottawa River, Toledo, Ohio, bounded by the arc of a circle with a 560-foot radius with its center in approximate position 41° 43.21 N, 083° 28.46 W. (Southeast end of the Summit Street Bridge.) (NAD 1983).

(b) *Effective Period.* This regulation is effective from 6:30 p.m. until 11 p.m., June 23, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 30, 2001.

David L. Scott,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01–14816 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

Continuous Emissions Monitoring

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 72 to 80, revised as of July 1, 2000, part 75 is corrected in § 75.10 by adding paragraph (g), and in § 75.32 by adding a sentence to paragraph (a)(3) after the second sentence to read as follows:

§ 75.10 General operating requirements.

* * * * *

(g) *Minimum Recording and Reporting Requirements.* The owner or operator shall record and the designated representative shall report the hourly, daily, quarterly, and annual information collected under the requirements of this part as specified in subparts F and G of this part.

§ 75.32 Determination of monitor data availability for standard missing data procedures.

* * * * *

(a) * * *

(3) * * * For a unit that has accumulated less than 8,760 unit operating hours in the previous three years (26,280 clock hours), replace the words ''during previous 8,760 unit operating hours'' in Equation 9 with ''in the previous three years'' and replace ''8,760'' with ''total unit operating hours in the previous three years''.

* * * * *

[FR Doc. 01–55518 Filed 6–12–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 1

[USCG 2001–8894]

RIN 2115–AG11

Right To Appeal; Director, Great Lakes Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard is amending its appellate procedures to provide explicit authority for appeal of decisions or actions taken by the Director, Great Lakes Pilotage. The Coast Guard has consistently applied those procedures whenever a decision or action taken by the Director has been appealed to higher

authority within the Coast Guard. At this point, the Coast Guard is simply amending its rules to reflect its established policy and practice.

DATES: This rule is effective September 11, 2001, unless an adverse comment, or notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before August 13, 2001. If an adverse comment, or notice of intent to submit an adverse comment, is received, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2001–8894] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. John Bennett, Coast Guard, telephone 202–267–2856. If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG 2001–8894], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

We are publishing a direct final rule under 33 CFR 1.05–55, because we do not expect an adverse comment. Unless we receive an adverse comment or notice of intent to submit one within the comment period specified under **DATES**, this rule will become effective as stated in **DATES**. In that case, about 30 days before the effective date, we will publish a document in the **Federal Register** stating that we received no adverse comment and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit one, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which we received no adverse comment. We will withdraw any part of this rule that becomes the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment counts as ''adverse'' if it explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

A review of our rules indicates that our policy and practice of permitting a party to appeal any decision or action of the Director, Great Lakes Pilotage, in accordance with the procedures 46 CFR Part 1.03 is not one provided for, explicitly, by those rules. Yet it also indicates that the practice has met universal acceptance by persons affected. The purpose of this direct final rule is to codify our established policy and practice on appeals.

Discussion of Rule

To codify these entails (1) amending 46 CFR 1.03–15 to take account of 46 U.S.C. Chapter 93 and 46 CFR Chapter III and identify the particular Coast Guard office for appeals; and (2) adding a new 46 CFR 1.03–50 to describe the appellate process for decisions or actions of the Director, Great Lakes Pilotage.

Because of an oversight affecting 46 CFR Subpart 1.03—Rights of Appeal, the appellate procedures of the Coast Guard do not by their terms apply to decisions or actions taken by the Director, Great Lakes Pilotage, under 46 U.S.C. Chapter 93 or 46 CFR Chapter III. Nonetheless, the Coast Guard has consistently followed them whenever a decision or action taken by the Director has been appealed to higher authority within the Coast Guard, Commandant (G–MW). This practice has met universal acceptance by persons affected. At this point, the Coast Guard is simply codifying its procedures to reflect its own policy and practice and meet the public's expectation.

Regulatory Evaluation

This direct final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040, February 26, 1979]. Because this rule is administrative in nature and simply codifies the policy and practice already in use since the beginning of Great Lakes Pilotage, we expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

populations of less than 50,000. This rule does not affect any small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We will evaluate, under the criteria in ''Regulatory Information'', any comments submitted in response to this finding.

Collection of Information

This direct final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this direct final rule under Executive Order 13132 and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This direct final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this direct final rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. It is ''procedural'' within the meaning of that paragraph. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 1

Organization, General Course and Methods Governing Marine Safety Functions.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 1 as follows:

1. Revise the citation of authority for part 1 to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

2. Revise paragraph (a) of § 1.03–15 and add paragraph (h)(5) to read as follows:

§ 1.03–15 General.

(a) Any person directly affected by a decision or action taken under this chapter or under chapter III of this title, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapterdealing with suspension-and-revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside, or revised.

* * * * *

(h) * * *

(5) Commandant (G–MW) for appeals involving decisions or actions of the Director, Great Lakes Pilotage.

* * * * *

3. Add § 1.03–50 to read as follows:

§ 1.03–50 Appeals from decisions or actions of the Director, Great Lakes Pilotage.

Any person directly affected by a decision or action of the Director, Great Lakes Pilotage, may make a formal appeal of that decision or action to Commandant (G–MW), in accordance with the procedures contained in § 1.03–15 of this subpart.

Dated: April 24, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 01–14817 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 051701G]

Atlantic Highly Migratory Species; Bluefin Tuna Recreational Fishery

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

ACTION: Retention limit adjustments.

SUMMARY: NMFS adjusts the daily retention limit for the recreational fisheries for Atlantic bluefin tuna (BFT) for the fishing year that began June 1, 2001, and ends May 31, 2002. Vessels permitted in the Atlantic Tunas Angling and the Atlantic Highly Migratory Species (HMS) Charter/Headboat categories are eligible to land BFT under the BFT Angling category quotas. The seasonal adjustments to the daily retention limit and the measurements for each BFT size class are specified in the **DATES** and **SUPPLEMENTARY INFORMATION** section of this document. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of this category.

DATES: Effective June 15 through October 31, 2001, the daily retention limit in all areas for all vessels fishing under the Angling category quota is adjusted to four BFT per vessel, which may be from the school, large school, or small medium size class.

Effective November 1, 2001 through May 31, 2002, the daily retention limit in all areas is adjusted to one large school or small medium BFT for all vessels fishing under the Angling category quota.

FOR FURTHER INFORMATION CONTACT: Brad McHale, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens

Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for the BFT recreational fishery and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit. Size class categories of BFT are defined as follows: school size BFT measure 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL); large school BFT measure 47 to less than 59 inches (119 to less than 150 cm) CFL; small medium BFT measure 59 to less than 73 inches (150 to less than 185 cm) CFL; large medium BFT measure 73 to less than 81 inches (185 to less than 206 cm) CFL; and giant BFT measure 81 inches or greater (206 cm or greater) CFL.

A recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) requires that NMFS limit the catch of school BFT to no more than 8 percent by weight of the total domestic landings quota over each 4-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999).

The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8-percent landings limit is met over the applicable 4-consecutive-year period. The 2001 fishing year is the third year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes.

Regulations at 50 CFR 635.23(b) restrict vessels fishing under the BFT Angling category quota to one BFT per vessel per day, which may be from the school, large school, or small medium category and, in addition, one large medium or giant BFT per vessel per year. This retention limit is subject to adjustment to provide for maximum utilization of the quota and enhanced fishing opportunities over the range of the recreational fisheries. NMFS has received comment from BFT fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips.

Since the beginning of the fishing year on June 1, 2001, the default Angling category daily retention limit at 50 CFR 635.23(b) has been in effect and applies until the effective date of this catch limit adjustment. Effective June 15 through October 31, 2001, NMFS adjusts the recreational fishing daily retention limit for all fishing areas to four BFT in any combination of the school, large school, or small medium size classes. This limit applies to all vessels permitted in the Atlantic Tunas Angling category and to vessels permitted in the Atlantic HMS Charter/Headboat category.

From November 1, 2001, through May 31, 2002, the daily retention limit for all vessels fishing under the Angling category quota will be adjusted to one large school or small medium BFT per vessel. Regardless of the length of the trip, no more than a single day's allowable catch may be possessed or retained.

NMFS selected the daily retention limit and the duration of the daily retention limit adjustment after examining past catch and effort rates and the available quota for 2001. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be announced through publication in the Federal Register. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Atlantic HMS Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels.

All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888)872–8862; or the Internet (www.nmfspermits.com); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 8, 2001.

Samuel W. McKeen,

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

[FR Doc. 01–14921 Filed 6–8–01; 4:20 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1139–04; I.D. 011101B]

RIN 0648–A082

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection 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. These modifications prohibit directed fishing for Pacific cod by specified vessels until the July 17, 2001, expiration of that emergency interim rule. It is expected

that NMFS will undertake further rulemaking by that date to establish new fishing seasons for the Pacific cod fisheries and other Steller sea lion protection measures for the second half of 2001. This current action is intended to provide for orderly implementation of 2001 Steller sea lion protection measures and is necessary to manage the groundfish fisheries off Alaska in a manner that continues to provide protection to Steller sea lions and their critical habitat in accordance with the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and Pub. L. 106–554.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2001, through July 17, 2001. Comments must be received July 9, 2001.

ADDRESSES: Comments may be sent to Sue Salveson, 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 e-mail or Internet.

Copies of the November 30, 2000, Biological Opinion and Incidental Take Statement on Authorization of the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries, based on the Fishery Management Plan for the Groundfish Fisheries 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: Sue Salveson, NMFS, 907–586–7228 or e-mail at *sue.salveson@noaa.gov*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fisheries 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 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 1-year phase-in of the RPA developed in the Comprehensive Biological Opinion (see **ADDRESSES**) as directed under section 209 of Pub. L. 106–554. This law was signed by the President on December 21, 2000, and 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. NMFS determined that the 2001 protection measures provided a sufficient degree of protection to endangered Steller sea lions during the 1-year phase-in period, were consistent with the intended purpose of the RPA, and allowed for the review or assessment called for in the ESA, and with section 209 of Pub. L. 106–554.

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. The emergency rule also implemented several new measures, including two fishing seasons for GOA Pacific cod and for non-Community Development Quota (CDQ) Pacific cod in the BSAI. A complete description and justification of the 2001 Steller sea lion protection measures is discussed in the preamble to the January 22, 2001, emergency rule (66 FR 7276).

On March 23, 2001, NMFS amended the emergency rule to change fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 meters (m)) length overall (LOA) fishing for BSAI Pacific cod with hook-and-line or pot gear (66 FR 17083, March 29, 2001). On March 20, 2001, NMFS also issued a correction to the January 22, 2001, emergency rule that addressed various technical and editorial errors (66 FR 15656, March 20, 2001).

As mentioned previously, the January 22, 2001, emergency rule established two fishing seasons for the BSAI and GOA Pacific cod fisheries, January 1 to June 10 (60 percent of the total allowable catch (TAC)), and June 10 to December 31 (40 percent of the TAC), except that directed fishing for Pacific cod with trawl gear was prohibited after October 31, 2001. The March 23, 2001, emergency rule removed the season restrictions for the BSAI jig gear fisheries and BSAI vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear. Separate allocations of the BSAI Pacific cod TAC are established for these two groups of vessels under § 679.20(a)(7)(i)(C) that facilitated separate seasonal fishing restrictions of this species. Justification for this relief of seasonal harvest constraints is discussed in the preamble to the March 23, 2001, emergency rule (66 FR 17083).

At its April 2001 meeting, the Council requested NMFS to issue an emergency rule establishing modified Steller sea lion protection measures for the second half of 2001 that would be implemented at the expiration of the January 22, 2001, emergency rule on July 17, 2001. NMFS is in the process of reviewing the Council's recommendation.

In addition to recommending measures for the second half of 2001, the Council, at its April meeting, requested NMFS delay the June 10 opening date of the GOA Pacific cod fishery and the BSAI Pacific cod fishery by vessels greater than 60 ft (18.3 m) LOA using pot or hook-and-line gear. The Council's request was intended to promote management of the Alaska Pacific cod fisheries in a manner that would maintain the objective of 2001 Steller sea lion protection measures to avoid localized depletion of Pacific cod through temporal and spatial distribution of the directed fisheries for this species. The Council's requested season delays also would address salmon and Pacific halibut bycatch concerns. Other fishery management concerns addressed included poor product recovery and quality in summer months; competition with summer salmon fisheries for processing facilities; potential gear conflicts between pot and trawl gear fleets; and coordination between BSAI Pacific cod fisheries within the CDQ and non-CDQ sectors. Regulations to prohibit directed fishing for Pacific cod in the GOA and in the BSAI by vessels equal to or greaater than 60 ft (18.3) LOA using pot or hook-and-line gear must be effective by June 10, 2001, to meet the intent of the Council and to avoid industry confusion and a race for available Pacific cod TAC on this date.

The Pacific cod seasons adopted by the Council and approved by NMFS

under this amendment to the January 22, 2001, emergency interim rule impose no seasonal harvest constraints for vessels fishing in the BSAI using jig gear, for vessels less than 60 ft LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries. These vessels were addressed in the March 23 amendment to the January 22 emergency rule. The Council's recommended start dates for the second Pacific cod season in 2001 for other Pacific cod sectors are listed here:

PACIFIC COD FISHERY SECTOR*	SECOND SEASON OPENING DATE OF DIRECTED FISHING FOR PACIFIC COD		
	June 10	August 15	September 1
Gulf of Alaska All gear types			X
Bering Sea and Aleutian Islands–All trawl	X		
Bering Sea and Aleutian Islands Pot vessels ≥60 ft LOA			X
Bering Sea and Aleutian Islands Vessels ≥ 60 ft LOA using hook-and-line gear		X	

* Seasonal harvest constraints are not established for BSAI vessels using jig gear, BSAI vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear, or for vessels participating in the CDQ fisheries.

The purpose of this amendment to the existing emergency interim rule is to support the Council's management intentions for the Pacific cod season delays through prohibitions on directed fishing for Pacific cod by specified vessels as of June 10. These closures will remain effective until the expiration of the January 22 emergency rule. An expected upcoming rule will establish new opening dates for the second Pacific cod season for different harvesting sectors. The justification for the fishery closures implemented under this amendment to the January 22 emergency rule follows.

The Council recommended that the second season opening date for the GOA Pacific cod fisheries be delayed from June 10 to September 1. Except for an allocation between inshore and offshore sectors under § 679.20(a)(6)(iii), the GOA Pacific cod TAC is not allocated among different gear sectors that would facilitate separate treatment of vessels using jig, pot, hook-and-line, or trawl gear. Thus, the Council's intent was to delay the second season for vessels using any gear type.

The Council recommended a season delay to September 1 in consideration of the fact that only 40 percent of the 2001 TAC remains for the remainder of the year, that the fishery would not be sufficiently compromised to the extent it would effect foraging Steller sea lions, and that trawl fishing would continue to be prohibited after October 31 to eliminate the potential of relatively high volume harvest amounts during winter months.

Further, a September 1 opening date for the second GOA Pacific cod season also would address concerns for salmon bycatch in the June and July trawl fisheries that could increase significantly if the Pacific cod fishery were to open June 10. Specifically, chum salmon move through the Gulf of Alaska and concentrate in Aleutian Island passes on their way to Western Alaska spawning grounds. During this time, they are vulnerable to interception in other fisheries, including GOA groundfish trawl fisheries. In the January 22 emergency interim rule that established NMFS' intent for 2001 Steller sea lion conservation measures, NMFS anticipated that the summer GOA pollock fishery would be delayed to August 20, thus avoiding the potential for significant salmon bycatch and the Council desired the same mitigation for the GOA Pacific cod trawl fisheries.

Finally, Pacific halibut bycatch rates in both the trawl and hook-and-line gear fisheries for GOA Pacific cod would increase significantly in summer months when halibut move into shallower waters where the cod fisheries typically are conducted. Furthermore, catch-per-unit of effort for Pacific cod is low at this time of year when fish are dispersed, and fishing gear is in the water for a longer period of time and has greater opportunity for increased incidental catch rates of prohibited species. The flesh quality and product recovery of Pacific cod also is relatively low in summer months, when a target fishery generally has been avoided in favor of other times of the year when harvest and revenues would be more optimal. Last, GOA processing capacity for groundfish in summer months is constrained by processing needs of the salmon industry and these competing uses of processing facilities would be avoided by the proposed delay of the Pacific cod fishery until early September when the salmon fisheries generally have concluded.

The Council also requested a delay of the second season opening date of the BSAI hook-and-line catcher/processor and catcher vessel fisheries for Pacific cod from June 10 until August 15. In taking this action, the Council recognized that NMFS already has implemented the 2001 seasonal apportionment of the non-trawl Pacific halibut bycatch limit in a manner that currently delays the BSAI hook-and-line Pacific cod fisheries to August 1. The additional delay from August 1 to August 15 was adopted by the Council to maintain temporal distribution of the fishery consistent with the objectives of existing Steller sea lion protection measures, while minimizing high halibut bycatch rates during summer months. This delay also reduces the potential for interaction of the hook-and-line gear fisheries with the endangered short-tailed albatross and other seabird species during summer months. Finally, this delay provides additional opportunity for the harvest of CDQ Pacific cod with hook-and-line gear to the extent that fishing for CDQ Pacific cod would occur in summer months prior to the start of the non-CDQ fisheries when partner vessels contracted to harvest or process CDQ Pacific cod become less available.

Finally, the Council requested a June 10 to September 1 delay in the second season opening date for the BSAI Pacific cod pot gear fishery by vessels equal to or greater than 60 ft (18.3 m) LOA. This action was requested in recognition that the amount of BSAI Pacific cod that remains to be harvested by these vessels in the second season represents less than 2 percent of the BSAI Pacific cod TAC. The Council also recognized that harvest removals by this gear type are slow paced and are unlikely to effect Steller sea lions in a manner not already considered by NMFS when it implemented the 2001 Steller sea lion protection measures. This season delay for the pot gear fleet also is intended by the Council to help avoid gear conflicts with the groundfish trawl fisheries.

The June 10 second season opening date for BSAI Pacific cod harvested by trawl vessels remains unchanged to maintain overall spatial and temporal distribution of the BSAI Pacific cod fisheries. Potential bycatch concerns ensuing from a summer trawl effort for Pacific cod was assumed by the Council to be self limiting due to low summer catch rates and the fleets' avoidance of high Pacific halibut bycatch rates that could preempt more lucrative fall fishing. Salmon bycatch in the non-pollock trawl fisheries typically has not posed a concern given that summer trawl fisheries typically are limited due to halibut bycatch concerns and restrictions. These fisheries also tend to operate on fishing grounds that avoid high bycatch rates of salmon.

NMFS has assessed the Council's request for delay of the second season opening date for Pacific cod by specified sectors relative to the objective of distributing Pacific cod fisheries in time and space to minimize fishery competition with Steller sea lion foraging success. The season delay only affects the BSAI Pacific cod pot and hook-and-line gear fisheries and the GOA Pacific cod fisheries. These fisheries will be limited to 40 percent of their 2001 Pacific cod TAC allocations. Any existing seasonal constraints for the BSAI trawl, jig, CDQ, and small vessel pot or hook-and-line fisheries for Pacific cod are unchanged. The BSAI Pacific cod pot gear allocation for the remainder of year totals less than 5,000 metric tons (mt). The magnitude and expected rate of removal by this gear type starting on September 1 for the remainder of 2001 does not pose concern for disproportionate removals of Pacific cod in critical habitat areas. The hook-and-line gear harvest of BSAI Pacific cod during the second season starting on August 15 historically is spread spatially in a manner that does not pose concern for disproportionate removal in Steller sea lion critical habitat. Further, the maximum historical weekly harvest rate by this sector in recent years (less than 5,600 mt) is sufficiently low as to not pose undue concern for prey competition with Steller sea lions during the 2001 phase-in year of the RPA.

The GOA Pacific cod fishery during the delayed second season would continue to be limited to 40 percent of the annual TAC and regulatory provisions will remain unchanged for the closure of the directed fishery by trawl vessels after October 31, 2001. Weekly catch rates of GOA Pacific cod are anticipated to be low during the second season given that Pacific cod are not aggregated in a manner conducive to intense harvest effort and removals.

Based on these determinations, NMFS finds that the compressed duration of the second Pacific cod season for the GOA fisheries and the BSAI pot and hook-and-line gear fisheries and the rate of removal of the remaining Pacific cod allocated to these fisheries are of sufficiently small temporal scale and impact as to not pose concern for a disproportionate rate of harvest removal. Thus, the effects of this amendment to the January 22, 2001, emergency interim rule on the ability of Steller sea lions to forage on available Pacific cod would not be compromised to the extent that the compressed seasons would lead to any effect that has not been previously considered in the implementation of the January 22, 2001, emergency rule, including any increased takes of Steller sea lions or any other species listed under the ESA.

This action also addresses prohibited species bycatch concerns. The second season delay for the BSAI hook-and-line and pot gear fisheries and the GOA fishery by any gear type is advisable in consideration of salmon, seabird, and Pacific halibut bycatch concerns, as well as general management of competing BSAI fisheries using the same fishing platforms (CDQ vs non-CDQ Pacific cod fisheries) and fishing grounds (pot gear vs non-pot gear).

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this emergency interim 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 emergency interim 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 emergency interim rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exit which may duplicate, overlap, or conflict with this action.

This amended emergency interim rule is consistent with the objectives for Steller sea lion protection measures implemented in 2001 under section 209(c)(6) of Pub. L. 106–554, the ESA, and other applicable laws. This action also will minimize bycatch rates of salmon and Pacific halibut in the Pacific cod fisheries while providing for continued temporal distribution of the Pacific cod fisheries. As such, the opportunity for harvest of Pacific cod will be optimized under prohibited species catch restrictions and the desire to avoid high bycatch rates of chum salmon in the GOA groundfish fisheries. The short-term directed fishing prohibitions implemented under the amended emergency interim rule must be effective by June 10, 2001, to realize the intent of the Council and NMFS and avoid more long-term fishery closures that could occur if the fishery were to be conducted when bycatch rates are high and cod catch rates are low. Thus, this action must be implemented as soon as practical and in a manner that makes impracticable prior opportunity for notice and public comment. Therefore, good cause exists to waive those requirements pursuant to 5 U.S.C. 553(b)(3). For the same reason, good cause exists to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). Because this emergency interim rule is not subject to the requirement to provide notice or an opportunity for comment by 5 U.S.C. 553 or any other laws, 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.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 7, 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 section 209, Pub. L. 106–554.

2. In § 679.23, paragraphs (d)(4) and (e)(6)(iii) are suspended and paragraphs (d)(5) and (e)(6)(iv) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(5) *Directed fishing for Pacific cod.* Directed fishing for Pacific cod in the Western and Central Regulatory Areas is prohibited.

(e) * * *

(6) * * *

(iv) *Nontrawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with non-trawl gear is authorized as follows:

(A) *Vessels using jig gear and vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear.* From 0001 hours A.l.t., January 1, through 2400 hours, A.l.t., July 17.

(B) *Vessels equal to or greater than 60 ft (18.3 m) and using pot or hook-and-line gear.* Directed fishing is prohibited.

[FR Doc. 01–14894 Filed 6–8–01; 4:20 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. 060801A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in 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 closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 11, 2001, until 1200 hrs, A.l.t., July 1, 2001.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 third seasonal apportionment of the 2001 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21 (e)(3)(iv)(B)(*1*), is 49 metric tons (66 FR 7276, January 22, 2001).

In accordance with § 679.21 (e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl 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 recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the halibut bycatch allowance for the yellowfin sole fishery category constitutes good cause to waive the requirement to provide prior notice 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 avoid exceeding the halibut bycatch allowance for the yellowfin sole fishery category 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 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: June 8, 2001.

Richard W. Surdi,

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

[FR Doc. 01–14892 Filed 6–8–01; 4:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 114
Wednesday, June 13, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV01–981–610 Review]

California Almonds; Section 610 Review of Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 981 for almonds grown in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this action must be received by August 13, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; E-mail: Martin.Engeler@usda.gov; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–8938; E-mail: George.Kelhart@usda.gov.

SUPPLEMENTARY INFORMATION: Marketing Order No. 981, as amended (7 CFR part 981), regulates the handling of almonds grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 981, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for California almonds.

The purpose of the review will be to determine whether the California marketing order for almonds should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the almond marketing order's impact on small businesses are invited.

Dated: June 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–14832 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, 5f, 18, and 301

[REG–106917–99]

RIN 1545–AX15

Changes in Accounting Periods

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under sections 441, 442, 706, and 1378 of the Internal Revenue Code of 1986 that relate to certain adoptions, changes, and retentions of annual accounting periods. The proposed regulations are necessary to update, clarify, and reorganize the rules and procedures for adopting, changing, and retaining a taxpayer's annual accounting period. The proposed regulations primarily affect taxpayers that want to adopt an annual accounting period under section 441 or that must receive approval from the Commissioner to adopt, change, or retain their annual accounting periods under section 442. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for October 2, 2001, must be received by September 11, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–106917–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–106917–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively,

taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Roy A. Hirschhorn and Martin Scully, Jr. (202) 622–4960; concerning submissions of comments and the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collections of information should be received by August 13, 2001. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information can be found in §§ 1.441–2(b)(1), 1.442–1(b)(1) and (b)(4) and (d), and 1.1378–1 of these regulations. Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53-week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year from their taxable year to a proposed fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year. This collection of information is mandatory. The likely respondents are businesses or other profit entities and individuals.

The estimated average annual burden per respondent and/or recordkeeper required by §§ 1.442–1(b)(1) and 1.1378–1 are reflected in the burdens of Forms 1128 and 2553.

Further, the estimated average burden per respondent and/or recordkeeper required by §§ 1.441–2(b)(1), 1.442–1(b)(4) and 1.442–1(d) is as follows:

Estimated total reporting/recordkeeping burden: 3,500 hours.

Estimated average burden per respondent/recordkeeper: 21 minutes.

Estimated number of respondents/recordkeepers: 10,000.

Estimated annual frequency of responses: On occasion.

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.

Background and Explanation of Provisions

A. Overview

This document contains proposed amendments to regulations under section 441 (period for computing taxable income), and sections 442, 706, and 1378 (regarding the requirement to obtain the approval of the Commissioner to adopt, change, or retain an annual accounting period).

B. Section 441: Period for Computing Taxable Income

1. *Background.* Section 441 provides that taxable income must be computed on the basis of the taxpayer's taxable year and generally defines the term ''taxable year.'' The current temporary regulations under section 441 are primarily the product of two separate Treasury Decisions, TD 8167, 52 FR 485241 (published with a cross reference to a notice of proposed rulemaking) and TD 8123, 52 FR 3615 (1988). Prior to the issuance of TD 8167 and TD 8123 (the temporary regulations), the regulations under section 441 contained provisions relating mostly to the period for computing taxable income and the election of a 52–53-week taxable year. The temporary regulations retain these provisions, but also add new provisions to implement section 806 of the Tax Reform Act of 1986, Public Law 99–512 (100 Stat. 2362), 1986–3 C.B. (Vol. 1) 1, 279, (the 1986 Act). Enacted with the principal intent of eliminating the deferral period between certain entities and their owners, the 1986 Act generally required partnerships, S corporations, and personal service corporations (PSCs) to conform their taxable years to the taxable years of their partners, shareholders, or employee-owners, respectively. H.R. Conf. Rep. No. 99–514, 99th Cong., 2d Sess 318 (1986).

In addition to general implementation provisions, the temporary regulations include transition and anti-abuse provisions specific to taxpayers in existence at the time the 1986 Act became effective. For example, § 1.441–3T provides rules intended to prevent taxpayers from circumventing the effective date of the provisions of the 1986 Act by adopting or changing to (or from) a 52–53-week taxable year during the period beginning after September 29, 1986, and ending before January 5, 1987.

Generally, this document reproposes the temporary regulations under section 441. However, this document also reorganizes, clarifies, modifies, and updates the temporary regulations. Many of the provisions contained in the temporary regulations remain essentially the same, including the general rules for adopting a taxable year, the provisions relating to electing a 52–53-week taxable year, and the rules for PSCs. However, provisions that are now obsolete have been removed, and new rules and definitions have been added, as described in more detail below. In addition, new cross-references to section 442 and the proposed regulations thereunder are included to guide taxpayers, where appropriate, to the rules and procedures for obtaining approval to adopt, change, or retain their annual accounting periods.

2. *General Rules and Definitions.* Most of the substantive provisions in § 1.441–1T of the temporary regulations

have been retained, including the general rules for the period for computing tax, numerous definitions, and the requirement that partnerships, S corporations, electing S corporations, and PSCs generally must demonstrate a business purpose and obtain the Commissioner's approval to adopt or retain a taxable year other than their required taxable year. However, § 1.441–1T has been reorganized, obsolete transition rules have been removed, and some rules have been clarified. For example, the proposed regulations now define the term required taxable year, identify entities that have such a year (with appropriate cross-references), and clarify the applicable exceptions.

In addition, the proposed regulations clarify the meaning of the requirement to keep books for taxpayers using a fiscal year. The temporary regulations provide that a fiscal year will be recognized only if the books of the taxpayer are kept in accordance with that fiscal year. The proposed regulations conform the book keeping requirement for taxpayers using a fiscal year to that of § 1.446–1(a)(4), which allows for a reconciliation between the taxpayer's books and return. However, as a term and condition of obtaining approval to adopt, change to, or retain an annual accounting period under section 442, certain taxpayers nevertheless may be required to compute income and keep their books (including financial statements and reports to creditors) on the basis of the requested annual accounting period. See, e.g., Rev. Proc. 2000–11 (2000–3 I.R.B. 309).

The proposed regulations also provide that a taxable year is adopted by filing the first federal income tax return using that taxable year. Accordingly, filing an application for an employer identification number, filing an extension, or making estimated tax payments, indicating a particular taxable year do not constitute an adoption of that year. Consequently, Rev. Rul. 57–589 (1957–2 C.B. 298), and Rev. Rul. 69–563 (1969–2 C.B. 104), holding that the filing of an extension and estimated tax payments establishes a taxable year, are proposed to be superseded. The IRS will continue to follow the decision in *E.G. Wilson,* 267 F. Supp. 89 (East. Dist. MO, 1967), with respect to the classification of an amended return as a ''first return.''

3. *52–53-week Taxable Years.* The proposed regulations retain most of the rules provided in § 1.441–2T of the temporary regulations for taxpayers electing to use a 52–53-week taxable year or changing to or from a 52–53-week taxable year. However, the procedures for certain taxpayers to obtain approval (automatic or otherwise) to change to or from a 52–53-week taxable year have been removed and are now contained in administrative procedures published by the Commissioner. See Rev. Proc. 2000–11; and Notice 2001–35 (IRB 2001–23). In addition, although these administrative procedures continue to provide automatic approval for a change to a 52–53-week taxable year ending with reference to the same calendar month, the change will be effected with a Form 1128 (Application to Adopt, Change or Retain a Tax Year) rather than with a statement, consistent with most other changes.

The proposed regulations also expand the applicability of the rules for determining the inclusion of income and deductions from a pass-through entity where either the entity or its owner uses a 52–53-week taxable year. In addition to applying to partnerships, S corporations, and PSCs (as in the temporary regulations), the proposed regulations apply these inclusion rules to trusts, common trust funds, controlled foreign corporations, foreign personal holding companies, and passive foreign investment companies that are qualified electing funds.

4. *Transition Rules.* Section 1.441–3T of the temporary regulations provide transition rules for the 1986 Act that generally were effective from September 29, 1986, through January 5, 1987. Moreover, the rules contained in § 1.441–3T regarding 52–53-week taxable years and the definition of a PSC were superseded by similar rules promulgated under §§ 1.441–2T and 1.441–4T, respectively. Because these rules are now obsolete, this section has been removed from the proposed regulations.

5. *Personal Service Corporations.* The rules for PSCs contained in § 1.441–4T of the temporary regulations generally have been retained in the proposed regulations. However, the proposed regulations reorganize and clarify the required taxable year of a PSC and the rules for adopting, changing to, and retaining a year other than the required taxable year. For example, the proposed regulations make clear that a PSC may have a year other than a required taxable year by making an election under section 444. In addition, the provision allowing a PSC to obtain automatic approval to change to its required taxable year has been removed and is now contained in Notice 2001–35 (I.R.B. 2001–23). Similarly, the rules regarding establishing a business purpose and obtaining approval for the use of a fiscal year have been moved to § 1.442–1(b) and Notice 2001–34 (I.R.B. 2001–23).

Comments were received on the notice of proposed rulemaking that is cross-referenced by the temporary regulations under § 1.441–4T. Most significantly, one commentator suggested that the testing period for determining whether a taxpayer is a PSC should be the three preceding taxable years, rather than the preceding taxable year, to prevent taxpayers from becoming a PSC due to temporary or aberrational conditions. The proposed regulations retain the one-year testing period provided in the temporary regulations. However, the IRS and Treasury Department will reconsider this testing period, as well as other comments received on the temporary regulations, to the extent similar comments are received on these proposed regulations now that taxpayers have significantly more experience with the provisions in the temporary regulations.

C. Section 442: Changes of Annual Accounting Period

1. *Background.* Under section 442 and the current regulations, a taxpayer generally can change its annual accounting period only by obtaining the approval of the Commissioner. The current regulations set forth the general rules for obtaining such approval, including: (1) The manner and time for filing an application to change an annual accounting period; (2) the requirement that the taxpayer demonstrate a substantial business purpose for the change; and (3) the need for agreement between the taxpayer and the Commissioner to the terms, conditions, and adjustments that are necessary to effect the change. Under the current regulations, both tax and non-tax factors are considered in determining whether a taxpayer has established a substantial business purpose.

2. *Manner and Time for Filing.* The proposed regulations retain the general requirement to file a Form 1128 to request approval, but extend the time for filing the Form 1128. The current regulations require that the Form 1128 be filed on or before the 15th day of the second calendar month (generally 45 days) following the close of the short period. Under the proposed regulations, the Form 1128 must be filed by the 15th day of the third calendar month (generally 75 days) after the close of the taxable year in which the taxpayer wants the adoption, change, or retention to be effective (i.e., the first effective year). However, taxpayers are encouraged to file their Forms 1128 as

soon after the close of the first effective year as possible to allow the IRS adequate time to process the Form 1128 before the extended due date of the return for the first effective year. Because the IRS has found that Forms 1128 filed before the close of the short period often lack complete information and result in processing delays, the proposed regulation provides that the Form 1128 may not be filed prior to the close of the first effective year.

3. *Business Purpose, Terms, Conditions, and Adjustments.* Taxpayers have expressed concern with the substantial business purpose requirement set forth in the current regulations. In particular, taxpayers have complained that the Commissioner's interpretation of a substantial business purpose as demonstrated in the IRS's ruling practice has been unclear, inconsistent, and overly restrictive.

As a result, the IRS and Treasury Department published Notice 99–19 (1999–1 C.B. 919) soliciting comments on how the rules for obtaining approval of an adoption, change, or retention in annual accounting period could be clarified and simplified. In response, commentators urged the IRS and Treasury Department to expand the categories of taxpayers that would be granted automatic approval for an annual accounting period and to revise the substantial business purpose requirement to broaden the circumstances in which a taxpayer will be granted approval to change an annual accounting period.

The IRS and Treasury Department believe that the proposed regulations, in combination with automatic and prior approval revenue procedures, will clarify the rules governing accounting periods, expand the circumstances in which taxpayers will be granted approval (automatically and otherwise), and result in a more clear, uniform ruling practice.

The proposed regulations continue to provide the general standards for obtaining approval for an adoption, change, or retention in annual accounting period: taxpayers must demonstrate the existence of a ''business purpose'' and must agree to the terms, conditions, and adjustments for the adoption, change, or retention. In modifying the ''substantial business purpose'' requirement to ''business purpose,'' the IRS and Treasury Department intend merely to conform to the language of the business purpose requirement found in sections 441(i), 706, and 1378 and not to lower the current standard. In addition, the proposed regulations contain business purpose guidelines generally applicable to all taxpayers. For example, the proposed regulations provide the general rule that deferral of income will not be treated as a business purpose. They also explain that a taxpayer will have demonstrated a business purpose by applying to adopt, change to, or retain a year coinciding with its required taxable year, ownership taxable year, or natural business year.

The prior approval revenue procedure is intended to provide more detailed guidance about how a taxpayer's business purpose will be evaluated, and the terms, conditions, and adjustments that will apply to an adoption, change, or retention of annual accounting period. Notice 2001–34, issued concurrently with these proposed regulations, proposes a revenue procedure that, when finalized, will provide the rules and procedures applicable to taxpayers who must apply to the national office to obtain the Commissioner's prior approval for an adoption, change, or retention. Under the proposed revenue procedure, the IRS in its ruling practice would no longer weigh the merit of the taxpayer's stated business purpose against the amount of distortion of income or other tax consequences resulting from an adoption, change, or retention. Taxpayers wanting to adopt, change to, or retain a natural business year generally would be granted approval (provided they agree to general terms and conditions) under the proposed revenue procedure as under the current IRS ruling practice. Also consistent with the current IRS ruling practice, establishing a natural business year generally will be the only circumstance under which a partnership, S corporation, electing S corporation, or PSC will be granted approval. However, the IRS ruling practice for other taxpayers generally will be liberalized. These other taxpayers that do not establish a natural business year generally would be granted approval under the proposed revenue procedure if they agree to certain additional terms, conditions, and adjustments designed to neutralize the tax effects of substantial distortion of income resulting from the change. Under the IRS's current ruling practice, these other taxpayers generally would have been denied approval to change their annual accounting period if the change would have resulted in more than de minimis distortion of income.

4. *Automatic Approval.* Under the current regulations, automatic approval is granted to a C corporation that satisfies certain conditions through the filing of a statement with the District Director. Among the requirements for automatic approval are that the taxpayer not have changed its annual accounting period at any time within the preceding ten calendar years, and that a C corporation not elect S corporation status for the taxable year immediately following the short period. The rules for C corporations contained in the current regulations are inconsistent with, and generally more restrictive than, the automatic approval procedures in Rev. Proc. 2000–11. For example, under Rev. Proc. 2000–11, six years (rather than ten) is the required period of time between automatic changes and an S corporation election is allowed for the tax year following the short period. Consequently, the proposed regulations remove the automatic approval provision contained in the current regulations.

Further, the proposed regulations provide that the procedures to obtain automatic approval of the Commissioner for an adoption, change, or retention of annual accounting period generally are contained in administrative procedures. The IRS and Treasury Department believe that this structure will allow for the issuance of more detailed and useful guidance. See, for example, Rev. Proc. 2000–11 (2000–3 I.R.B. 309), which provides procedures for automatic approval for corporations; Notice 2001–35, proposing to update and supersede Rev. Proc. 87–32 (1987–2 C.B. 396), which provides procedures for automatic approval for partnerships, S corporations, electing S corporations, and PSCs; and Rev. Proc. 66–50 (1966–2 C.B. 1260), which provides automatic approval provisions for individuals. As part of the finalization of these proposed regulations and the proposed revenue procedures contained in Notices 2001–34 and 2001–35, the IRS and Treasury Department intend to update the procedures in Rev. Proc. 2000–11 to make conforming changes. For example, Rev. Proc. 2000–11 may be modified to reduce the time period between automatic changes from six to four years (as proposed in Notice 2001–34) and to provide audit protection for taxpayers making voluntary period changes (as proposed in both notices).

5. *Obsolete Provisions.* The rules relating to partners and partnerships contained in the current regulations are proposed to be removed because they have been superseded by the 1986 Act. Updated rules for partners and partnerships are provided in new proposed regulations under § 1.706–1 contained in this notice of proposed rulemaking.

Similarly, the rules relating to certain foreign corporations contained in the current regulations are proposed to be

removed because they have been superseded by section 898. Updated rules for these foreign corporations are contained in proposed regulations under section 898.

Finally, the proposed regulations would remove the following transitional provisions, which are now obsolete: §§ 5c.442–1, 5f.442–1, 1.442–2T, and 1.442–3T.

D. Sections 706: Taxable Years of Partners and Partnerships

1. Partnership Taxable Year

The current regulations under § 1.706–1 have not been updated to reflect changes made to section 706(b) by the 1986 Act. These proposed regulations modify the current regulations to reflect the required taxable year of a partnership consistent with the 1986 Act and § 1.706–1T (regarding the taxable year that results in the least aggregate deferral of income). The proposed regulations also remove the procedural aspects of establishing a business purpose and requesting approval of the Commissioner to adopt or change a taxable year and instead refer to the procedures in § 1.442–1 (including the administrative procedures prescribed thereunder).

These regulations also propose to remove § 1.706–1T. This removal is not intended to effect a substantive change because the provisions of § 1.706–1T generally are adopted by the proposed regulations. The IRS and Treasury recently expressed a commitment to the finalization of § 1.706–1T, as well as other previously proposed regulations under section 706, LR–183–84 (49 FR 47048) and LR–53–88 (53 FR 19715). See 66 FR 3920, 3922. However, it is believed that adopting the substantive provisions of § 1.706–1T in the current proposed regulations will promote clarity and efficiency.

2. Inclusion Rule for Distributions, Sales, and Exchanges

Section 1.706–1(a)(2) of the current regulations provides that any gain or loss from a partnership distribution or from a sale or exchange of all or part of a partnership interest is includible in the partner's gross income for the taxable year in which the payment is made. Gain or loss from a distribution or a sale or exchange of a partnership interest generally is includible in gross income in the taxable year in which payment is made, but not always. For example, a partner who sells his partnership interest in exchange for an installment note may be able to defer inclusion of the gain from that sale under the installment method of accounting. Because the IRS and Treasury Department believe that other provisions of the Code and regulations provide adequate guidance on the time for including gain or loss from a partnership distribution or from a sale or exchange of a partnership interest, the inclusion rule in § 1.706–1(a)(2) is proposed to be removed.

3. Determination of Interest in Profits and Capital

To apply any of the three required taxable year tests, a partnership must determine the partners' interests in partnership profits and capital. The proposed regulations elaborate on the meaning of a partner's interest in partnership profits and capital for purposes of these tests. With respect to profits interests, the regulations clarify that a partner's profits interest is the partner's share of the taxable income, rather than the book income, of the partnership. The regulations also clarify that the partners' profits interests are determined on an annual basis based on the manner in which the partnership expects to allocate its income for the year. If the partnership does not expect to have income in the current year, then the partnership determines the partner's profits interests based on the manner in which it expects to allocate its income in the first taxable year in which the partnership expects to have income.

Generally, a partner's interest in partnership capital is determined through reference to the assets of the partnership that the partner would be entitled to upon withdrawal from the partnership or upon the liquidation of the partnership. See, e.g., § 1.704–1(e)(v), Rev. Proc. 93–27 (1993 C.B. 343). As a practical matter, such a determination will require a valuation of the partnership's assets. Because the determination under section 706 must be made on an annual basis, the burden associated with actual valuations may make it difficult for partnerships to identify their taxable years quickly and easily. Therefore, for partnerships that maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), these proposed regulations provide that in making this determination, it will be reasonable for the partnership to assume that a partner's interest in partnership capital is the ratio of the partner's capital account to all partners' capital accounts. The IRS and Treasury Department are aware that this method will not always be as precise as an actual valuation, but believe that any imprecision is outweighed by the strong interest that partnerships have in being able to easily determine their taxable year.

This definition of a partner's interest in partnership profits and capital was designed to be compatible with the provisions of, and policies underlying, section 706(b). Many other sections of the Code also contain references to a partner's interest in partnership profits or capital. As those sections address concerns that differ substantially from the concerns addressed by section 706(b), this proposed regulation should not be read to create any implication as to the meaning of a partner's interest in partnership profits and capital for purposes of those sections.

E. Section 1378: S Corporations

The current regulations under § 18.1378–1 describe the permitted year of an S corporation and provide procedural rules for an S corporation or electing S corporation to obtain approval to adopt, change, or retain its taxable year. However, the automatic change provision contained in these regulations is more restrictive than the automatic change proposed in Notice 2001–35. For this reason, and to be consistent with the policy decision to provide the procedural aspects of adopting, retaining, or changing a taxable year under § 1.442–1 (including the administrative procedures prescribed thereunder), these regulations propose to modify § 18.1378–1 to remove these procedural rules and instead refer to § 1.442–1.

F. Proposed Effective Date

These regulations are proposed to be applicable for taxable years ending on or after the date these regulations are published in the **Federal Register** as final regulations.

Effect on Other Documents

Rev. Rul. 57–589 is obsolete.

Rev. Rul. 65–316 (1965–2 C.B. 149) is obsolete.

Rev. Rul. 68–125 (1968–1 C.B. 189) is obsolete.

Rev. Rul. 69–563 is obsolete.

Rev. Rul. 74–326 (1974–2 C.B. 142) is obsolete.

Rev. Rul. 78–179 (1978–1 C.B. 132) is obsolete.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not

have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few small entities are expected to adopt a 52–53 week taxable year, triggering the collection of information, and that for those who do, the burden imposed under § 1.441–2(b)(1)(ii) will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 2, 2001, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit timely written or electronic comments and must submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by September 11, 2001.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Roy A. Hirschhorn and Martin Scully, Jr. of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1, 5f, and 18

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5c

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5c, 5f, 18, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In the list below, for each section indicated in the left column, remove the old language in the middle column and add the new language in the right column.

Affected Section	Remove	Add
1.46–1(p)(2)(iv)	paragraph (b)(1) of § 1.441–2	§ 1.441–2
1.48–3(d)(1)(iii)	paragraph (b)(1) of § 1.441–2	§ 1.441–2
1.280H–1T(a), last sentence	§ 1.441–4T(d)	§ 1.441–3(c)
1.443–1(b)(1)(ii)	and paragraph (c)(5) of § 1.441–2	and § 1.441–2(b)(2)(ii)
1.444–1T(a)(1), first sentence	§ 1.441–4T(d)	§ 1.441–3(c)
1.444–2T(a), last sentence	§ 1.441–4T(d)	§ 1.441–3(c)
1.448–1(h)(2)(ii)(B)(*1*)	§ 1.441–2T(b)(1)	§ 1.441–2(c)
1.469–1(h)(4)(ii)(D)	§ 1.441–4T(f)	§ 1.441–3(e)
1.469–1T(g)(2)(i)	§ 1.441–4T(d)	§ 1.441–3(c)
1.1561–1(c)(2)	See paragraph (b)(1) of § 1.441–2	See § 1.441–2
1.6654–2(a), concluding text	paragraph (b) of § 1.441–2	§ 1.441–2(c)
1.6655–2(a)(4), first sentence	paragraph (b) of § 1.441–2	§ 1.441–2(c)
301.7701(b)–6(a), third sentence	§ 1.441–1(e)	§ 1.441–1(b)

Par. 3. Sections 1.441–0, 1.441–1, 1.441–2, 1.441–3, and 1.441–4 are added to read as follows:

§ 1.441–0 Table of contents.

This section lists the captions contained in § 1A1.441–1 through 1.441–4 as follows:

§ 1.441–1 Period for computation of taxable income.

(a) Computation of taxable income.
(1) In general.
(2) Length of taxable year.
(b) General rules and definitions.
(1) Taxable year.
(2) Required taxable year.
(i) In general.
(ii) Exceptions.
(A) 52–53-week taxable years.
(B) Partnerships, S corporations, and PSCs.
(C) Specified foreign corporations.
(3) Annual accounting period.
(4) Calendar year.
(5) Fiscal year.
(i) Definition.
(ii) Recognition.
(6) Grandfathered fiscal year.
(7) Books.
(c) Adoption of taxable year.
(1) In general.
(2) Approval required.
(i) Taxpayers with required taxable years.
(ii) Taxpayers without books.
(d) Retention of taxable year.
(e) Change of taxable year.
(f) Obtaining approval of the Commissioner or making a section 444 election.

§ 1.441–2 Election of taxable year consisting of 52–53 weeks.

(a) In general.
(1) Election.
(2) Eligible taxpayer.
(3) Example.
(b) Procedures to elect a 52–53-week taxable year.

(1) Adoption of a 52–53-week taxable year.
(i) In general.
(ii) Filing requirement.
(2) Change to (or from) a 52–53-week taxable year.
(i) In general.
(ii) Special rules for short period required to effect the change.
(3) Examples.
(c) Application of effective dates.
(1) In general.
(2) Examples.
(3) Changes in tax rates.
(4) Examples.
(d) Computation of taxable income.
(e) Treatment of taxable years ending with reference to the same calendar month.
(1) Pass-through entities.
(2) Personal service corporations and employee-owners.
(3) Definitions.
(i) Pass-through entity.
(ii) Owner of a pass-through entity.
(4) Examples.
(5) Transition rule.

§ 1.441–3 Taxable year of a personal service corporation.

(a) Taxable year.
(1) Required taxable year.
(2) Exceptions.
(b) Adoption, change, or retention of taxable year.
(1) Adoption of taxable year.
(2) Change in taxable year.
(3) Retention of taxable year.
(4) Procedures for obtaining approval or making a section 444 election.
(5) Examples.
(c) Personal service corporation defined.
(1) In general.
(2) Testing period.
(i) In general.
(ii) New corporations.
(3) Examples.
(d) Performance of personal services.
(1) Activities described in section 448(d)(2)(A).
(2) Activities not described in section 448(d)(2)(A).
(e) Principal activity.
(1) General rule.
(2) Compensation cost.
(i) Amounts included.
(ii) Amounts excluded.
(3) Attribution of compensation cost to personal service activity.
(i) Employees involved only in the performance of personal services.
(ii) Employees involved only in activities that are not treated as the performance of personal services.
(iii) Other employees.
(A) Compensation cost attributable to personal service activity.
(B) Compensation cost not attributable to personal service activity.
(f) Services substantially performed by employee-owners.
(1) General rule.
(2) Compensation cost attributable to personal services.
(3) Examples.
(g) Employee-owner defined.
(1) General rule.
(2) Special rule for independent contractors who are owners.
(h) Special rules for affiliated groups filing consolidated returns.
(1) In general.
(2) Examples.

§ 1.441–4 Effective date.

§ 1.441–1 Period for computation of taxable income.

(a) *Computation of taxable income*—(1) *In general*. Taxable income must be computed and a return must be made for a period known as the ''taxable year.'' For rules relating to methods of accounting, the taxable year for which items of gross income are included and deductions are taken, inventories, and adjustments, see parts II and III (section 446 and following), subchapter E, chapter 1 of the Internal Revenue Code, and the regulations thereunder.

(2) *Length of taxable year*. Except as otherwise provided in the Internal Revenue Code and the regulations thereunder (e.g., § 1.441–2 regarding 52–53-week taxable years), a taxable year may not cover a period of more than 12 calendar months.

(b) *General rules and definitions*. The general rules and definitions in this paragraph (b) apply for purposes of sections 441 and 442 and the regulations thereunder.

(1) *Taxable year. Taxable year* means—

(i) The period for which a return is made, if a return is made for a period of less than 12 months (short period). See section 443 and the regulations thereunder;

(ii) Except as provided in paragraph (b)(1)(i) of this section, the taxpayer's required taxable year (as defined in paragraph (b)(2) of this section), if applicable;

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, the taxpayer's annual accounting period (as defined in paragraph (b)(3) of this section), if it is a calendar year or a fiscal year; or

(iv) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, the calendar year, if the taxpayer keeps no books, does not have an annual accounting period, or has an annual accounting period that does not qualify as a fiscal year.

(2) *Required taxable year*—(i) *In general*. Certain taxpayers must use the particular taxable year that is required under the Internal Revenue Code and the regulations thereunder (the required taxable year). For example, the required taxable year is—

(A) In the case of a foreign sales corporation or domestic international sales corporation, the taxable year determined under section 441(h) and § 1.921–1T(a)(11), (b)(4), and (b)(6);

(B) In the case of a personal service corporation (PSC), the taxable year determined under section 441(i) and § 1.441–3;

(C) In the case of a nuclear decommissioning fund, the taxable year determined under § 1.468A–4(c)(1);

(D) In the case of a designated settlement fund or a qualified settlement fund, the taxable year determined under § 1.468B–2(j);

(E) In the case of a common trust fund, the taxable year determined under section 584(i);

(F) In the case of certain trusts, the taxable year determined under section 644;

(G) In the case of a partnership, the taxable year determined under section 706 and § 1.706–1;

(H) In the case of an insurance company, the taxable year determined under section 843 and § 1.1502–76(a)(2);

(I) In the case of a real estate investment trust, the taxable year determined under section 859;

(J) In the case of a real estate mortgage investment conduit, the taxable year determined under section 860D(a)(5) and § 1.860D–1(b)(6);

(K) In the case of a specified foreign corporation, the taxable year determined under section 898(c) and §§ 1.898–1 through 1.898–4;

(L) In the case of an S corporation, the taxable year determined under section 1378 and § 1.1378–1; or

(M) In the case of a member of an affiliated group that makes a consolidated return, the taxable year determined under § 1.1502–76.

(ii) *Exceptions*. Notwithstanding paragraph (b)(2)(i) of this section, the following taxpayers may have a taxable year other than their required taxable year:

(A) *52–53-week taxable years.* Certain taxpayers may elect to use a 52–53-week taxable year that ends with reference to their required taxable year. See, for example, §§ 1.441–3 (PSCs), 1.706–1 (partnerships), 1.1378–1 (S corporations), and 1.1502–76(a)(1) (members of a consolidated group), and 1.898–4(c)(3) (specified foreign corporations).

(B) *Partnerships, S corporations, and PSCs.* A partnership, S corporation, or PSC may use a taxable year other than its required taxable year if the taxpayer elects a 52–53-week taxable year that ends with reference to its required taxable year as provided in paragraph (b)(2)(ii)(A) of this section, elects to use a taxable year other than its required taxable year under section 444, or establishes a business purpose to the satisfaction of the Commissioner under

section 442 (such as a grandfathered fiscal year).

(C) *Specified foreign corporations.* A specified foreign corporation (as defined in section 898(b)) may use a taxable year other than its required taxable year if it elects a 52–53-week taxable year that ends with reference to its required taxable year as provided in paragraph (b)(2)(ii)(A) of this section or makes a one-month deferral election under section 898(c)(1)(B) and § 1.898–3(a)(2).

(3) *Annual accounting period. Annual accounting period* means the annual period (calendar year or fiscal year) on the basis of which the taxpayer regularly computes its income in keeping its books.

(4) *Calendar year. Calendar year* means a period of 12 consecutive months ending on December 31. A taxpayer who has not established a fiscal year must make its return on the basis of a calendar year.

(5) *Fiscal year*—(i) *Definition. Fiscal year* means—

(A) A period of 12 consecutive months ending on the last day of any month other than December; or

(B) A 52–53-week taxable year, if such period has been elected by the taxpayer. See § 1.441–2.

(ii) *Recognition.* A fiscal year will be recognized only if the books of the taxpayer are kept in accordance with such fiscal year.

(6) *Grandfathered fiscal year. Grandfathered fiscal year* means a fiscal year (other than a year that resulted in a three month or less deferral of income) that a partnership or an S corporation received permission to use on or after July 1, 1974, by a letter ruling (i.e., not by automatic approval).

(7) *Books. Books* include the taxpayer's regular books of account and such other records and data as may be necessary to support the entries on the taxpayer's books and on the taxpayer's return, as for example, a reconciliation of any difference between such books and the taxpayer's return. Records that are sufficient to reflect income adequately and clearly on the basis of an annual accounting period will be regarded as the keeping of books. See section 6001 and the regulations thereunder for rules relating to the keeping of books and records.

(c) *Adoption of taxable year*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, a new taxpayer may adopt any taxable year that satisfies the requirements of section 441 and the regulations thereunder without the approval of the Commissioner. A taxable year of a new taxpayer is adopted by filing its first federal income tax return using that taxable year. The filing of an application for automatic extension of time to file a federal income tax return (e.g., Form 7004), the filing of an application for an employer identification number (i.e., Form SS4), or the payment of estimated taxes, for a particular taxable year do not constitute an adoption of that taxable year.

(2) *Approval required*—(i) *Taxpayers with required taxable years.* A newly-formed partnership, electing S corporation, or newly-formed PSC that wants to adopt a taxable year other than its required taxable year, a 52–53-week taxable year that ends with reference to its required taxable year, or a taxable year elected under section 444, must establish a business purpose and obtain the approval of the Commissioner under section 442.

(ii) *Taxpayers without books.* A taxpayer that must use a calendar year under section 441(g) and paragraph (f) of this section may not adopt a fiscal year without obtaining the approval of the Commissioner.

(d) *Retention of taxable year.* In certain cases, a partnership, S corporation, or PSC will be required to change its taxable year unless it obtains the approval of the Commissioner under section 442, or makes an election under section 444, to retain its current taxable year. For example, a corporation using a June 30 fiscal year that either becomes a PSC or elects to be an S corporation and, as a result, is required to use the calendar year under sections 441(i) or 1378, respectively, must obtain the approval of the Commissioner to retain its current fiscal year. Similarly, a partnership using a taxable year that corresponds to its required taxable year must obtain the approval of the Commissioner to retain such taxable year if its required taxable year changes as a result of a change in ownership. However, a partnership that previously established a business purpose to the satisfaction of the Commissioner to use a taxable year is not required to obtain the approval of the Commissioner if its required taxable year changes as a result of a change in ownership.

(e) *Change of taxable year.* Once a taxpayer has adopted a taxable year, such taxable year must be used in computing taxable income and making returns for all subsequent years unless the taxpayer obtains approval from the Commissioner to make a change or the taxpayer is otherwise authorized to change without the approval of the Commissioner under the Internal Revenue Code (e.g., section 444 or section 859) or the regulations thereunder.

(f) *Obtaining approval of the Commissioner or making a section 444 election.* See § 1.442–1(b) for procedures for obtaining approval of the Commissioner (automatically or otherwise) to adopt, change, or retain an annual accounting period. See §§ 1.444–1T and 1.444–2T for qualifications, and 1.444–3T for procedures, for making an election under section 444.

§ 1.441–2 Election of taxable year consisting of 52–53 weeks.

(a) *In general*—(1) *Election.* An eligible taxpayer may elect to compute its taxable income on the basis of a fiscal year that—

(i) Varies from 52 to 53 weeks;

(ii) Ends always on the same day of the week; and

(iii) Ends always on—

(A) Whatever date this same day of the week last occurs in a calendar month; or

(B) Whatever date this same day of the week falls that is the nearest to the last day of the calendar month.

(2) *Eligible taxpayer.* A taxpayer is eligible to elect a 52–53-week taxable year if such fiscal year would otherwise satisfy the requirements of section 441 and the regulations thereunder. For example, a taxpayer that is required to use a calendar year under § 1.441–1(b)(1)(D) is not an eligible taxpayer.

(3) *Example.* The provisions of this paragraph (a) are illustrated by the following example:

Example. If the taxpayer elects a taxable year ending always on the last Saturday in November, then for the year 2001, the taxable year would end on November 24, 2001. On the other hand, if the taxpayer had elected a taxable year ending always on the Saturday nearest to the end of November, then for the year 2001, the taxable year would end on December 1, 2001. Thus, in the case of a taxable year described in paragraph (a)(1)(iii)(A) of this section, the year will always end within the month and may end on the last day of the month, or as many as six days before the end of the month. In the case of a taxable year described in paragraph (a)(1)(iii)(B) of this section, the year may end on the last day of the month, or as many as three days before or three days after the last day of the month.

(b) *Procedures to elect a 52–53-week taxable year*—(1) *Adoption of a 52–53 week taxable year*—(i) *In general.* A new eligible taxpayer elects a 52–53-week taxable year by adopting such year in accordance with § 1.441–1(c). A newly-formed partnership, electing S corporation, or newly-formed personal service corporation (PSC) may adopt a 52–53-week taxable year without the approval of the Commissioner if such year ends with reference to either the taxpayer's required taxable year (as

defined in § 1.441–1(b)(2)) or the taxable year elected under section 444. See §§ 1.706–1, 1.1378–1 and 1.441–3. Similarly, a newly-formed specified foreign corporation (as defined in section 898(b)) may adopt a 52–53-week taxable year if such year ends with reference to the taxpayer's required taxable year, or, if the one-month deferral election under section 898(c)(1)(B) is made, with reference to the month immediately preceding the required taxable year. See § 1.898–4(c)(3). See also § 1.1502–76(a)(1) for special rules regarding subsidiaries adopting 52–53-week taxable years.

(ii) *Filing requirement.* A taxpayer adopting a 52–53-week taxable year must file with its federal income tax return for its first taxable year a statement containing the following information—

(A) The calendar month with reference to which the new 52–53-week taxable year ends;

(B) The day of the week on which the 52–53-week taxable year always will end; and

(C) Whether the 52–53-week taxable year will always end on the date on which that day of the week last occurs in the calendar month, or on the date on which that day of the week falls that is nearest to the last day of that calendar month.

(2) *Change to (or from) a 52–53 week taxable year*—(i) *In general.* An election of a 52–53-week taxable year by an existing eligible taxpayer with an established taxable year is treated as a change in annual accounting period that requires the approval of the Commissioner in accordance with § 1.442–1. Thus, a taxpayer must obtain approval to change from its current taxable year to a 52–53-week taxable year. Similarly, a taxpayer must obtain approval to change from a 52–53-week taxable year, or to change from one 52–53-week taxable year to another 52–53-week taxable year. However, if a change to a 52–53-week taxable year ends with reference to the same calendar month as the existing taxable year, or if a change from a 52–53-week taxable year ends with reference to the same calendar month as the proposed taxable year, the taxpayer may obtain approval for the change automatically pursuant to administrative procedures published by the Commissioner. See § 1.442–1(b) for procedures for obtaining such approval.

(ii) *Special rules for the short period required to effect the change.* If a change to or from a 52–53-week taxable year results in a short period (within the meaning of § 1.443–1(a)) of 359 days or more, or six days or less, the tax computation under § 1.443–1(b) does not apply. If the short period is 359 days or more, it is treated as a full taxable year. If the short period is six days or less, such short period is not a separate taxable year but instead is added to and deemed a part of the following taxable year. (In the case of a change to or from a 52–53-week taxable year not involving a change of the month with reference to which the taxable year ends, the tax computation under § 1.443–1(b) does not apply because the short period will always be 359 days or more, or six days or less.) In the case of a short period which is more than six days and less than 359 days, taxable income for the short period is placed on an annual basis for purposes of § 1.443–1(b) by multiplying such income by 365 and dividing the result by the number of days in the short period. In such case, the tax for the short period is the same part of the tax computed on such income placed on an annual basis as the number of days in the short period is of 365 days (unless § 1.443–1(b)(2), relating to the alternative tax computation, applies). For an adjustment in deduction for personal exemption, see § 1.443–1(b)(1)(v).

(3) *Examples.* The following examples illustrate paragraph (b)(2)(ii) of this section:

Example 1. A taxpayer having a fiscal year ending April 30, obtains approval to change to a 52–53-week taxable year ending the last Saturday in April for taxable years beginning after April 30, 2001. This change involves a short period of 362 days, from May 1, 2001, to April 27, 2002, inclusive. Because the change results in a short period of 359 days or more, it is not placed on an annual basis and is treated as a full taxable year.

Example 2. Assume the same conditions as *Example 1,* except that the taxpayer changes for taxable years beginning after April 30, 2002, to a taxable year ending on the Thursday nearest to April 30. This change results in a short period of two days, May 1 to May 2, 2002. Because the short period is less than seven days, tax is not separately computed. This short period is added to and deemed part of the following 52–53-week taxable year, which would otherwise begin on May 3, 2002, and end on May 1, 2003.

(c) *Application of effective dates*—(1) *In general.* Except as provided in paragraph (c)(3) of this section, for purposes of determining the effective date (e.g., of legislative or regulatory changes) or the applicability of any provision of this title that is expressed in terms of taxable years beginning, including, or ending with reference to the first or last day of a specified calendar month, a 52–53-week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52–53-week taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52–53-week taxable year, as the case may be. Examples of provisions of this title, the applicability of which is expressed in terms referred to in the preceding sentence, include the provisions relating to the time for filing returns and other documents, paying tax, or performing other acts, and the provisions of part II, subchapter B, chapter 6 (section 1561 and following) relating to surtax exemptions of certain controlled corporations.

(2) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. Assume that an income tax provision is applicable to taxable years beginning on or after January 1, 2001. For that purpose, a 52–53-week taxable year beginning on any day within the period December 26, 2000, to January 4, 2001, inclusive, is treated as beginning on January 1, 2001.

Example 2. Assume that an income tax provision requires that a return must be filed on or before the 15th day of the third month following the close of the taxable year. For that purpose, a 52–53-week taxable year ending on any day during the period May 25 to June 3, inclusive, is treated as ending on May 31, the last day of the month ending nearest to the last day of the taxable year, and the return, therefore, must be made on or before August 15.

Example 3. X, a corporation created on January 1, 2001, elects a 52–53-week taxable year ending on the Friday nearest the end of December. Thus, X's first taxable year begins on Monday, January 1, 2001, and ends on Friday, December 28, 2001; its next taxable year begins on Saturday, December 29, 2001, and ends on Friday, January 3, 2003; and its next taxable year begins on Saturday, January 4, 2003, and ends on Friday, January 2, 2004. For purposes of applying the provisions of Part II, subchapter B, chapter 6 of the Internal Revenue Code, X's first taxable year is deemed to end on December 31, 2001; its next taxable year is deemed to begin on January 1, 2002, and end on December 31, 2002, and its next taxable year is deemed to begin on January 1, 2003, and end on December 31, 2003. Accordingly, each such taxable year is treated as including one and only one December 31st.

(3) *Changes in tax rates.* If a change in the rate of tax is effective during a 52–53-week taxable year (other than on the first day of such year as determined under paragraph (c)(1) of this section), the tax for the 52–53-week taxable year must be computed in accordance with section 15, relating to effect of changes, and the regulations thereunder. For the purpose of the computation under section 15, the determination of the number of days in the period before the change, and in the period on and after the change, is to be made without regard to the provisions of paragraph (b)(1) of this paragraph.

(4) *Examples.* The provisions of paragraph (c)(3) of this section may be illustrated by the following examples:

Example 1. Assume a change in the rate of tax is effective for taxable years beginning after June 30, 2002. For a 52–53-week taxable year beginning on Friday, November 2, 2001, the tax must be computed on the basis of the old rates for the actual number of days from November 2, 2001, to June 30, 2002, inclusive, and on the basis of the new rates for the actual number of days from July 1, 2002, to Thursday, October 31, 2002, inclusive.

Example 2. Assume a change in the rate of tax is effective for taxable years beginning after June 30, 2001. For this purpose, a 52–53-week taxable year beginning on any of the days from June 25 to July 4, inclusive, is treated as beginning on July 1. Therefore, no computation under section 15 will be required for such year because of the change in rate.

(d) *Computation of taxable income.* The principles of section 451, relating to the taxable year for inclusion of items of gross income, and section 461, relating to the taxable year for taking deductions, generally are applicable to 52–53-week taxable years. Thus, except as otherwise provided, all items of income and deduction must be determined on the basis of a 52–53-week taxable year. However, a taxpayer may determine particular items as though the 52–53-week taxable year were a taxable year consisting of 12 calendar months, provided that practice is consistently followed by the taxpayer and clearly reflects income. For example, an allowance for depreciation or amortization may be determined on the basis of a 52–53-week taxable year, or as though the 52–53-week taxable year is a taxable year consisting of 12 calendar months, provided the taxpayer consistently follows that practice with respect to all depreciable or amortizable items.

(e) *Treatment of taxable years ending with reference to the same calendar month*—(1) *Pass-through entities.* If a pass-through entity (as defined in paragraph (e)(3)(i) of this section) or an owner of a pass-through entity (as defined in paragraph (e)(3)(ii) of this section), or both, use a 52–53-week taxable year and the taxable year of the pass-through entity and the owner end with reference to the same calendar month, then, for purposes of determining the taxable year in which items of income, gain, loss, deductions, or credits from the pass-through entity are taken into account by the owner of the pass-through, the owner's taxable year will be deemed to end on the last day of the pass-through's taxable year. Thus, if the taxable year of a partnership and a partner end with reference to the same calendar month, then for purposes of determining the taxable year in which that partner takes into account items described in section 702 and items that are deductible by the partnership (including items described in section 707(c)) and includible in the income of that partner, that partner's taxable year will be deemed to end on the last day of the partnership's taxable year. Similarly, if the taxable year of an S corporation and a shareholder end with reference to the same calendar month, then for purposes of determining the taxable year in which that shareholder takes into account items described in section 1366(a) and items that are deductible by the S corporation and includible in the income of that shareholder, that shareholder's taxable year will be deemed to end on the last day of the S corporation's taxable year.

(2) *Personal service corporations and employee-owners.* If the taxable year of a PSC (within the meaning of § 1.441–3(c)) and an employee-owner (within the meaning of § 1.441–3(g)) end with reference to the same calendar month, then for purposes of determining the taxable year in which an employee-owner takes into account items that are deductible by the PSC and includible in the income of the employee-owner, the employee-owner's taxable year will be deemed to end on the last day of the PSC's taxable year.

(3) *Definitions*—(i) *Pass-through entity.* For purposes of this section, a pass-through entity means a partnership, S corporation, trust, estate, common trust fund (within the meaning of section 584(i)), controlled foreign corporation (within the meaning of section 957), foreign personal holding company (within the meaning of section 552), or passive foreign investment company that is a qualified electing fund (within the meaning of section 1295).

(ii) *Owner of a pass-through entity.* For purposes of this section, an owner of a pass-through entity means a taxpayer that owns an interest in, or stock of, a pass-through entity. For example, an owner of a pass-through entity includes a partner in a partnership, a shareholder of an S corporation, a beneficiary of a trust or an estate, a participant in a common trust fund, a U.S. shareholder (as defined in section 951(b)) of a controlled foreign corporation, a U.S. shareholder (as defined in section 551(a)) of a foreign personal holding company, or a U.S. person that holds stock in a passive foreign investment company that is a qualified electing fund.

(4) *Examples.* The provisions of paragraph (e)(2) of this section may be illustrated by the following examples:

Example 1. ABC Partnership uses a 52–53-week taxable year that ends on the Wednesday nearest to December 31, and its partners, A, B, and C, are individual calendar year taxpayers. Assume that, for ABC's taxable year ending January 3, 2001, each partner's distributive share of ABC's taxable income is $10,000. Under section 706(a) and paragraph (e)(1) of this section, for the taxable year ending December 31, 2000, A, B, and C each must include $10,000 in income with respect to the ABC year ending January 3, 2001. Similarly, if ABC makes a guaranteed payment to A on January 2, 2001, A must include the payment in income for A's taxable year ending December 31, 2000.

Example 2. X, a PSC, uses a 52–53-week taxable year that ends on the Wednesday nearest to December 31, and all of the employee-owners of X are individual calendar year taxpayers. Assume that, for its taxable year ending January 3, 2001, X pays a bonus of $10,000 to each employee-owner on January 2, 2001. Under paragraph (e)(2) of this section, each employee-owner must include its bonus in income for the taxable year ending December 31, 2000.

(5) *Transition rule.* In the case of an owner of a pass-through entity (other than the owner of a partnership or S corporation) that is required by this paragraph (e) to include in income for its first taxable year ending on or after the date these regulations are published in the **Federal Register** as final regulations amounts attributable to two taxable years of a pass-through entity, the amount that otherwise would be required to be included in income for such first taxable year by reason of this paragraph (e) should be included in income ratably over the four-taxable-year period beginning with such first taxable year under principles similar to § 1.702–3T, unless the owner of the pass-through elects to include all such income in its first taxable year ending on or after the date these regulations are published in the **Federal Register** as final regulations.

§ 1.441–3 Taxable year of a personal service corporation.

(a) *Taxable year*—(1) *Required taxable year.* Except as provided in paragraph (a)(2) of this section, the taxable year of a personal service corporation (PSC) (as defined in paragraph (c) of this section) must be the calendar year.

(2) *Exceptions.* A PSC may have a taxable year other than its required taxable year (i.e., a fiscal year) if elects to use a 52–53-week taxable year that ends with reference to the calendar year, makes an election under section 444, or establishes a business purpose for such fiscal year and obtains the approval of the Commissioner under section 442.

(b) *Adoption, change, or retention of taxable year—(1) Adoption of taxable year.* A PSC may adopt, in accordance with § 1.441–1(c), the calendar year, a 52–53-week taxable year ending with reference to the calendar year, or a taxable year elected under section 444 without the approval of the Commissioner. See § 1.441–1. A PSC that wants to adopt any other taxable year must establish a business purpose and obtain the approval of the Commissioner under section 442.

(2) *Change in taxable year.* A PSC that wants to change its taxable year must obtain the approval of the Commissioner under section 442 or make an election under section 444. However, a PSC may obtain automatic approval for certain changes, including a change to the calendar year or to a 52–53-week taxable year ending with reference to the calendar year, pursuant to administrative procedures published by the Commissioner.

(3) *Retention of taxable year.* In certain cases, a PSC will be required to change its taxable year unless it obtains the approval of the Commissioner under section 442, or makes an election under section 444, to retain its current taxable year. For example, a corporation using a June 30 fiscal year that becomes a PSC and, as a result, is required to use the calendar year must obtain the approval of the Commissioner to retain its current fiscal year.

(4) *Procedures for obtaining approval or making a section 444 election.* See § 1.442–1(b) for procedures to obtain the approval of the Commissioner (automatically or otherwise) to adopt, change, or retain a taxable year. See §§ 1.444–1T and 1.444–2T for qualifications, and 1.444–3T for procedures, for making an election under section 444.

(5) *Examples.* The provisions of paragraph (b)(4) of this section may be illustrated by the following examples:

Example 1. X, whose taxable year ends on January 31, 2001, becomes a PSC for its taxable year beginning February 1, 2001, and does not obtain the approval of the Commissioner for using a fiscal year. Thus, for taxable years ending before February 1, 2001, this section does not apply with respect to X. For its taxable year beginning on February 1, 2001, however, X will be required to comply with paragraph (a) of this section. Thus, unless X obtains approval of the Commissioner to use a January 31 taxable year, or makes a section 444 election, X will be required to change its taxable year to the calendar year under paragraph (b) of this section by using a short taxable year that begins on February 1, 2001, and ends on December 31, 2001. Under paragraph (b)(1) of this section, X may obtain automatic approval to change its taxable year to a calendar year. See § 1.442–1(b).

Example 2. Assume the same facts as in *Example 1*, except that X desires to change to a 52–53-week taxable year ending with reference to the month of December. Under paragraph (b)(1) of this section X may obtain automatic approval to make the change. See § 1.442–1(b).

(c) *Personal service corporation defined*—(1) *In general.* For purposes of this section and section 442, a taxpayer is a PSC for a taxable year only if—

(i) The taxpayer is a C corporation (as defined in section 1361(a)(2)) for the taxable year;

(ii) The principal activity of the taxpayer during the testing period is the performance of personal services;

(iii) During the testing period, those services are substantially performed by employee-owners (as defined in paragraph (g) of this section); and

(iv) Employee-owners own (as determined under the attribution rules of section 318, except that ''any'' applies instead of ''50 percent'' in section 318(a)(2)(C)) more than 10 percent of the fair market value of the outstanding stock in the taxpayer on the last day of the testing period.

(2) *Testing period*—(i) *In general.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, the testing period for any taxable year is the immediately preceding taxable year.

(ii) *New corporations.* The testing period for a taxpayer's first taxable year is the period beginning on the first day of that taxable year and ending on the earlier of—

(A) The last day of that taxable year; or

(B) The last day of the calendar year in which that taxable year begins.

(3) *Examples.* The provisions of paragraph (c)(2)(ii) of this section may be illustrated by the following examples:

Example 1. Corporation A's first taxable year begins on June 1, 2001, and A desires to use a September 30 taxable year. However, if A is a personal service corporation, it must obtain the Commissioner's approval to use a September 30 taxable year. Pursuant to paragraph (c)(2)(ii) of this section, A's testing period for its first taxable year beginning June 1, 2001, is the period June 1, 2001 through September 30, 2001. Thus, if, based upon such testing period, A is a personal service corporation, A must obtain the Commissioner's permission to use a September 30 taxable year.

Example 2. The facts are the same as in *Example 1*, except that A desires to use a March 31 taxable year. Pursuant to paragraph (c)(2)(ii) of this section, A's testing period for its first taxable year beginning June 1, 2001, is the period June 1, 2001, through December 31, 2001. Thus, if, based upon such testing period, A is a personal service corporation, A must obtain the Commissioner's permission to use a March 31 taxable year.

(d) *Performance of personal services*—(1) *Activities described in section 448(d)(2)(A).* For purposes of this section, any activity of the taxpayer described in section 448(d)(2)(A) or the regulations thereunder will be treated as the performance of personal services. Therefore, any activity of the taxpayer that involves the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting (as such fields are defined in § 1.448–1T) will be treated as the performance of personal services for purposes of this section.

(2) *Activities not described in section 448(d)(2)(A).* For purposes of this section, any activity of the taxpayer not described in section 448(d)(2)(A) or the regulations thereunder will not be treated as the performance of personal services.

(e) *Principal activity*—(1) *General rule.* For purposes of this section, the principal activity of a corporation for any testing period will be the performance of personal services if the cost of the corporation's compensation (the compensation cost) for such testing period that is attributable to its activities that are treated as the performance of personal services within the meaning of paragraph (d) of this section (i.e., the total compensation for personal service activities) exceeds 50 percent of the corporation's total compensation cost for such testing period.

(2) *Compensation cost*—(i) *Amounts included.* For purposes of this section, the compensation cost of a corporation for a taxable year is equal to the sum of the following amounts allowable as a deduction, allocated to a long-term contract, or otherwise chargeable to a capital account by the corporation during such taxable year—

(A) Wages and salaries; and

(B) Any other amounts, attributable to services performed for or on behalf of the corporation by a person who is an employee of the corporation (including an owner of the corporation who is treated as an employee under paragraph (g)(2) of this section) during the testing period. Such amounts include, but are not limited to, amounts attributable to deferred compensation, commissions, bonuses, compensation includible in income under section 83, compensation for services based on a percentage of profits, and the cost of providing fringe benefits that are includible in income.

(ii) *Amounts excluded.* Notwithstanding paragraph (e)(2)(i) of this section, compensation cost does not include amounts attributable to a plan qualified under section 401(a) or 403(a),

or to a simplified employee pension plan defined in section 408(k).

(3) *Attribution of compensation cost to personal service activity*—(i) *Employees involved only in the performance of personal services.* The compensation cost for employees involved only in the performance of activities that are treated as personal services under paragraph (d) of this section, or employees involved only in supporting the work of such employees, are considered to be attributable to the corporation's personal service activity.

(ii) *Employees involved only in activities that are not treated as the performance of personal services.* The compensation cost for employees involved only in the performance of activities that are not treated as personal services under paragraph (d) of this section, or for employees involved only in supporting the work of such employees, are not considered to be attributable to the corporation's personal service activity.

(iii) *Other employees.* The compensation cost for any employee who is not described in either paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section (a mixed-activity employee) is allocated as follows—

(A) *Compensation cost attributable to personal service activity.* That portion of the compensation cost for a mixed activity employee that is attributable to the corporation's personal service activity equals the compensation cost for that employee multiplied by the percentage of the total time worked for the corporation by that employee during the year that is attributable to activities of the corporation that are treated as the performance of personal services under paragraph (d) of this section. That percentage is to be determined by the taxpayer in any reasonable and consistent manner. Time logs are not required unless maintained for other purposes;

(B) *Compensation cost not attributable to personal service activity.* That portion of the compensation cost for a mixed activity employee that is not considered to be attributable to the corporation's personal service activity is the compensation cost for that employee less the amount determined in paragraph (e)(3)(iii)(A) of this section.

(f) *Services substantially performed by employee-owners*—(1) *General rule.* Personal services are substantially performed during the testing period by employee-owners of the corporation if more than 20 percent of the corporation's compensation cost for that period attributable to its activities that are treated as the performance of personal services within the meaning of paragraph (d) of this section (i.e., the total compensation for personal service activities) is attributable to personal services performed by employee-owners.

(2) *Compensation cost attributable to personal services.* For purposes of paragraph (f)(1) of this section—

(i) The corporation's compensation cost attributable to its activities that are treated as the performance of personal services is determined under paragraph (e)(3) of this section; and

(ii) The portion of the amount determined under paragraph (f)(2)(i) of this section that is attributable to personal services performed by employee-owners is to be determined by the taxpayer in any reasonable and consistent manner.

(3) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. For its taxable year beginning February 1, 2001, Corp A's testing period is the taxable year ending January 31, 2000. During that testing period, A's only activity was the performance of personal services. The total compensation cost of A (including compensation cost attributable to employee-owners) for the testing period was $1,000,000. The total compensation cost attributable to employee-owners of A for the testing period was $210,000. Pursuant to paragraph (f)(1) of this section, the employee-owners of A substantially performed the personal services of A during the testing period because the compensation cost of A's employee-owners was more than 20 percent of the total compensation cost for all of A's employees (including employee-owners).

Example 2. Corp B has the same facts as corporation A in *Example 1*, except that during the taxable year ending January 31, 2001, B also participated in an activity that would not be characterized as the performance of personal services under this section. The total compensation cost of B (including compensation cost attributable to employee-owners) for the testing period was $1,500,000 ($1,000,000 attributable to B's personal service activity and $500,000 attributable to B's other activity). The total compensation cost attributable to employee-owners of B for the testing period was $250,000 ($210,000 attributable to B's personal service activity and $40,000 attributable to B's other activity). Pursuant to paragraph (f)(1) of this section, the employee-owners of B substantially performed the personal services of B during the testing period because more than 20 percent of B's compensation cost during the testing period attributable to its personal service activities was attributable to personal services performed by employee-owners ($210,000).

(g) *Employee-owner defined*—(1) *General rule.* For purposes of this section, a person is an employee-owner of a corporation for a testing period if—

(i) The person is an employee of the corporation on any day of the testing period; and

(ii) The person owns any outstanding stock of the corporation on any day of the testing period.

(2) *Special rule for independent contractors who are owners.* Any person who is an owner of the corporation within the meaning of paragraph (g)(1)(ii) of this section and who performs personal services for, or on behalf of, the corporation is treated as an employee for purposes of this section, even if the legal form of that person's relationship to the corporation is such that the person would be considered an independent contractor for other purposes.

(h) *Special rules for affiliated groups filing consolidated returns*—(1) *In general.* For purposes of applying this section to the members of an affiliated group of corporations filing a consolidated return for the taxable year—

(i) The members of the affiliated group are treated as a single corporation;

(ii) The employees of the members of the affiliated group are treated as employees of such single corporation; and

(iii) All of the stock of the members of the affiliated group that is not owned by any other member of the affiliated group is treated as the outstanding stock of that corporation.

(2) *Examples.* The provisions of this paragraph (h) may be illustrated by the following examples:

Example 1. The affiliated group AB, consisting of corporation A and its wholly owned subsidiary B, filed a consolidated Federal income tax return for the taxable year ending January 31, 2001, and AB is attempting to determine whether it is affected by this section for its taxable year beginning February 1, 2001. During the testing period (i.e., the taxable year ending January 31, 2001), A did not perform personal services. However, B's only activity was the performance of personal services. On the last day of the testing period, employees of A did not own any stock in A. However, some of B's employees own stock in A. In the aggregate, B's employees own 9 percent of A's stock on the last day of the testing period. Pursuant to paragraph (h)(1) of this section, this section is effectively applied on a consolidated basis to members of an affiliated group filing a consolidated federal income tax return. Because the only employee-owners of AB are the employees of B, and because B's employees do not own more than 10 percent of AB on the last day of the testing period, AB is not a PSC subject to the provisions of this section. Thus, AB is not required to determine on a consolidated basis whether, during the testing period, its principal activity is the providing of personal services, or the personal services are substantially performed by employee-owners.

Example 2. The facts are the same as in *Example 1*, except that on the last day of the testing period A owns only 80 percent of B.

The remaining 20 percent of B is owned by employees of B. The fair market value of A, including its 80 percent interest in B, as of the last day of the testing period, is $1,000,000. In addition, the fair market value of the 20 percent interest in B owned by B's employees is $50,000 as of the last day of the testing period. Pursuant to paragraphs (c)(1)(iv) and paragraph (h)(1) of this section, AB must determine whether the employee-owners of A and B (i.e., B's employees) own more than 10 percent of the fair market value of A and B as of the last day of the testing period. Because the $140,000 [($1,000,000 × .09) + $50,000] fair market value of the stock held by B's employees is greater than 10 percent of the aggregate fair market value of A and B as of the last day of the testing period, or $105,000 [$1,000,000 + $50,000 × .10], AB may be subject to this section if, on a consolidated basis during the testing period, the principal activity of AB is the performance of personal services and the personal services are substantially performed by employee-owners.

§ 1.441–4 Effective date.

Sections 1.441–0 through 1.441–3 are applicable for taxable years ending on or after the date these regulations are published in the **Federal Register** as final regulations.

§§ 1.441–1T, 1.441–2T, 1.441–3T and 1.441–4T [Removed]

Par. 4. Sections 1.441–1T, 1.441–2T, 1.441–3T and 1.441–4T are removed.

Par 5. Section 1.442–1 is revised to read as follows:

§ 1.442–1 Change of annual accounting period.

(a) *Approval of the Commissioner.* A taxpayer that has adopted an annual accounting period (as defined in § 1.441–1(b)(3)) as its taxable year generally must continue to use that annual accounting period in computing its taxable income and for making its federal income tax returns. If the taxpayer wants to change its annual accounting period and use a new taxable year, it must obtain the approval of the Commissioner, unless it is otherwise authorized to change without the approval of the Commissioner under either the Internal Revenue Code (e.g., section 444 and section 859) or the regulations thereunder (e.g., paragraph (c) of this section). In addition, as described in § 1.441–1(c) and (d), a partnership, S corporation, electing S corporation, or personal service corporation (PSC) generally is required to secure the approval of the Commissioner to adopt or retain an annual accounting period other than its required taxable year. The manner of obtaining approval from the Commissioner to adopt, change, or retain an annual accounting period is provided in paragraph (b) of this section. However, special rules for obtaining approval may be provided in other sections.

(b) *Obtaining approval*—(1) *Time and manner for requesting approval.* Except as otherwise provided in paragraph (b)(3) of this section, in order to secure the approval of the Commissioner to adopt, change, or retain an annual accounting period, a taxpayer must file an application, generally on Form 1128 (Application To Adopt, Change, or Retain a Tax Year), with the Commissioner. The Form 1128 must be filed no earlier than the day following the close of the first taxable year in which the taxpayer wants the adoption, change, or retention to be effective (the first effective year) and no later than the 15th day of the third calendar month following the close of the first effective year. However, in the case of a change that results in a short period of six days or less, the Form 1128 must be filed no later than the 15th day of the third calendar month following the close of the short period, even though the short period is not treated as a separate taxable year under § 1.441–2(b)(2).

(2) *General requirements for approval.* Except as provided in paragraph (b)(3) of this section, an adoption, change, or retention in annual accounting period will be approved where the taxpayer establishes a business purpose for the requested annual accounting period and agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the adoption, change, or retention. In determining whether a taxpayer has established a business purpose and which terms, conditions, and adjustments will be required, consideration will be given to all the facts and circumstances relating to the adoption, change, or retention, including the tax consequences resulting therefrom. Generally, the requirement of a business purpose will be satisfied, and adjustments to neutralize any tax consequences will not be required, if the requested annual accounting period coincides with the taxpayer's required taxable year (as defined in § 1.441–1(b)(2)), ownership taxable year, or natural business year. In the case of a partnership, S corporation, electing S corporation, or PSC, deferral of income to partners, shareholders, or employee-owners will not be treated as a business purpose.

(3) *Administrative procedures.* Notwithstanding the provisions of paragraphs (b)(1) and (2) of this section, the Commissioner may prescribe administrative procedures under which a taxpayer will be permitted to adopt, change, or retain an annual accounting period. These administrative procedures will describe the business purpose requirements (including an ownership taxable year and a natural business year) and the terms, conditions, and adjustments necessary to obtain approval. Such terms, conditions, and adjustments may include adjustments necessary to neutralize the tax effects of a substantial distortion of income that would otherwise result from the requested annual accounting period including: a deferral of a substantial portion of the taxpayer's income, or shifting of a substantial portion of deductions, from one taxable year to another; a similar deferral or shifting in the case of any other person, such as a beneficiary in an estate; the creation of a short period in which there is a substantial net operating loss, capital loss, or credit (including a general business credit); or the creation of a short period in which there is a substantial amount of income to offset an expiring net operating loss, capital loss, or credit. See, for example, Notice 2001–34 (2001–23 I.R.B. 1302), procedures to obtain the Commissioner's prior approval of an adoption, change, or retention in annual accounting period through application to the national office; Rev. Proc. 2000–11 (2000–3 I.R.B. 309), automatic approval procedures for certain corporations; Notice 2001–35 (2001–23 I.R.B. 1314), automatic approval procedures for partnerships, S corporations, electing S corporations, and PSCs; and Rev. Proc. 66–50 (1966–2 C.B. 1260), automatic approval procedures for individuals. For availability of Revenue Procedures and Notices, see § 601.601(d)(2) of this chapter.

(4) *Taxpayers to whom section 441(g) applies.* If section 441(g) and § 1.441–1(b)(1)(iv) apply to a taxpayer, the adoption of a fiscal year is treated as a change in the taxpayer's annual accounting period under section 442. Therefore, that fiscal year can become the taxpayer's taxable year only with the approval of the Commissioner. In addition to any other terms and conditions that may apply to such a change, the taxpayer must establish and maintain books that adequately and clearly reflect income for the short period involved in the change and for the fiscal year proposed.

(c) *Special rule for change of annual accounting period by subsidiary corporation.* A subsidiary corporation that is required to change its annual accounting period under § 1.1502–76, relating to the taxable year of members of an affiliated group that file a consolidated return, does not need to obtain the approval of the

Commissioner or file an application on Form 1128 with respect to that change.

(d) *Special rule for newly married couples.* (1) A newly married husband or wife may obtain automatic approval under this paragraph (d) to change his or her annual accounting period in order to use the annual accounting period of the other spouse so that a joint return may be filed for the first or second taxable year of that spouse ending after the date of marriage. Such automatic approval will be granted only if the newly married husband or wife adopting the annual accounting period of the other spouse files a federal income tax return for the short period required by that change on or before the 15th day of the 4th month following the close of the short period. See section 443 and the regulations thereunder. If the due date for any such short-period return occurs before the date of marriage, the first taxable year of the other spouse ending after the date of marriage cannot be adopted under this paragraph (d). The short-period return must contain a statement at the top of page one of the return that it is filed under the authority of this paragraph (d). The newly married husband or wife need not file Form 1128 with respect to a change described in this paragraph (d). For a change of annual accounting period by a husband or wife that does not qualify under this paragraph (d), see paragraph (b) of this section.

(2) The provisions of this paragraph (d) may be illustrated by the following example:

Example. H & W marry on September 25, 2001. H is on a fiscal year ending June 30, and W is on a calendar year. H wishes to change to a calendar year in order to file joint returns with W. W's first taxable year after marriage ends on December 31, 2001. H may not change to a calendar year for 2001 since, under this paragraph (d), he would have had to file a return for the short period from July 1 to December 31, 2000, by April 16, 2001. Since the date of marriage occurred subsequent to this due date, the return could not be filed under this paragraph (d). Therefore, H cannot change to a calendar year for 2001. However, H may change to a calendar year for 2002 by filing a return under this paragraph (d) by April 15, 2002, for the short period from July 1 to December 31, 2001. If H files such a return, H and W may file a joint return for calendar year 2002 (which is W's second taxable year ending after the date of marriage).

(e) *Effective date.* The rules of this section are applicable for taxable years ending on or after the date these regulations are published in the **Federal Register** as final regulations.

§§ 1.442–2T and 1.442–3T [Removed]

Par. 6. Sections 1.442–2T and 1.442–3T are removed.

Par. 7. Section 1.706–1 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 1.706–1 Taxable years of partner and partnership.

(a) *Year in which partnership income is includible.* (1) In computing taxable income for a taxable year, a partner is required to include the partner's distributive share of partnership items set forth in section 702 and the regulations thereunder for any partnership taxable year ending within or with the partner's taxable year. A partner must also include in taxable income for a taxable year guaranteed payments under section 707(c) that are deductible by the partnership under its method of accounting in the partnership taxable year ending within or with the partner's taxable year.

(2) The rules of this paragraph (a)(1) may be illustrated by the following example:

Example. Partner A reports his income using a calendar year, while the partnership of which he is a member reports its income using a fiscal year ending May 31. The partnership reports its income and deductions under the cash method of accounting. During the partnership taxable year ending May 31, 2002, the partnership makes guaranteed payments of $120,000 to A for services and for the use of capital. Of this amount, $70,000 was paid to A between June 1 and December 31, 2001, and the remaining $50,000 was paid to A between January 1 and May 31, 2002. The entire $120,000 paid to A is includible in A's taxable income for the calendar year 2002 (together with A's distributive share of partnership items set forth in section 702 for the partnership taxable year ending May 31, 2002).

(3) If a partner receives distributions under section 731 or sells or exchanges all or part of a partnership interest, any gain or loss arising therefrom does not constitute partnership income.

(b) *Taxable year*—(1) *Partnership treated as a taxpayer.* The taxable year of a partnership must be determined as though the partnership were a taxpayer.

(2) *Partnership's taxable year*—(i) *Required taxable year.* Except as provided in paragraph (b)(2)(ii) of this section, the taxable year of a partnership must be—

(A) The majority interest taxable year, as defined in section 706(b)(4);

(B) If there is no majority interest taxable year, the taxable year of all of the principal partners of the partnership, as defined in 706(b)(3) (the principal partners' taxable year); or;

(C) If there is no majority interest taxable year or principal partners' taxable year, the taxable year that produces the least aggregate deferral of income as determined under § 1.706–1(b)(3).

(ii) *Exceptions.* A partnership may have a taxable year other than its required taxable year if it elects to use a 52–53-week taxable year that ends with reference to its required taxable year, makes an election under section 444, or establishes a business purpose for such taxable year and obtains approval of the Commissioner under section 442.

(3) *Least aggregate deferral*—(i) *Taxable year that results in the least aggregate deferral of income.* The taxable year that results in the least aggregate deferral of income will be the taxable year of one or more of the partners in the partnership which will result in the least aggregate deferral of income to the partners. The aggregate deferral for a particular year is equal to the sum of the products determined by multiplying the month(s) of deferral for each partner that would be generated by that year and each partner's interest in partnership profits for that year. The partner's taxable year that produces the lowest sum when compared to the other partner's taxable years is the taxable year that results in the least aggregate deferral of income to the partners. If the calculation results in more than one taxable year qualifying as the taxable year with the least aggregate deferral, the partnership may select any one of those taxable years as its taxable year. However, if one of the qualifying taxable years is also the partnership's existing taxable year, the partnership must maintain its existing taxable year. The determination of the taxable year that results in the least aggregate deferral of income generally must be made as of the beginning of the partnership's current taxable year. The district director, however, may determine that the first day of the current taxable year is not the appropriate testing day and require the use of some other day or period that will more accurately reflect the ownership of the partnership and thereby the actual aggregate deferral to the partners where the partners engage in a transaction that has as its principal purpose the avoidance of the principles of this section. Thus, for example the preceding sentence would apply where there is a transfer of an interest in the partnership that results in a temporary transfer of that interest principally for purposes of qualifying for a specific taxable year under the principles of this section. For purposes of this section, deferral to each partner is measured in terms of months from the end of the partnership's taxable year forward to the end of the partner's taxable year.

(ii) *Determination of the taxable year of a partner or partnership that uses a 52–53 week taxable year.* For purposes

of the calculation described in paragraph (b)(3)(i) of this section, the taxable year of a partner or partnership that uses a 52–53 week taxable year must be the same year determined under the rules of section 441(f) and the regulations thereunder with respect to the inclusion of income by the partner or partnership.

(iii) *Special de minimis rule.* If the taxable year that results in the least aggregate deferral produces an aggregate deferral that is less than .5 when compared to the aggregate deferral of the current taxable year, the partnership's current taxable year will be treated as the taxable year with the least aggregate deferral. Thus, the partnership will not be permitted to change its taxable year.

(iv) *Examples.* The principles of this section may be illustrated by the following examples:

Example 1. Partnership P is on a fiscal year ending June 30. Partner A reports income on the fiscal year ending June 30 and Partner B reports income on the fiscal year ending July 31. A and B each have a 50 percent interest in partnership profits. For its taxable year beginning July 1, 1987, the partnership will be required to retain its taxable year since the fiscal year ending June 30 results in the least aggregate deferral of income to the partners. This determination is made as follows:

Test 6/30	Year end	Interest in partnership profits	Months of deferral for 6/30 year end	Interest × Deferral
Partner A	6/30	.5	0	0
Partner B	7/31	.5	1	.5
Aggregate deferral				.5

Test 7/31	Year end	Interest in partnership profits	Months of deferral for 7/31 year end	Interest × deferral
Partner A	6/30	.5	11	5.5
Partner B	7/31	.5	0	0
Aggregate deferral				5.5

Example 2. The facts are the same as in *Example 1* except that A reports income on the calendar year and B reports on the fiscal year ending November 30. For the partnership's taxable year beginning July 1, 1987, the partnership is required to change its taxable year to a fiscal year ending November 30 because such year results in the least aggregate deferral of income to the partners. This determination is made as follows:

Test 12/31	Year end	Interest in partnership profits	Months of deferral for 12/31 year end	Interest × deferral
Partner A	12/31	.5	0	0
Partner B	11/30	.5	11	5.5
Aggregate deferral				5.5

Test 11/30	Year end	Interest in partnership profits	Months of deferral for 11/30 year end	Interest × deferral
Partner A	12/31	.5	1	.5
Partner B	11/30	.5	0	0
Aggregate deferral				.5

Example 3. The facts are the same as in *Example 2* except that B reports income on the fiscal year ending June 30. For the partnership's taxable year beginning July 1, 1987, each partner's taxable year will result in identical aggregate deferral of income. If the partnership's current taxable year was neither a fiscal year ending June 30 nor the calendar year, the partnership would select either the fiscal year ending June 30 or the calendar year as its taxable year. However, since the partnership's current taxable year ends June 30, it must retain its current taxable year. This determination is made as follows:

Test 12/31	Year end	Interest in partnership profits	Months of deferral for 12/31 year end	Interest × deferral
Partner A	12/31	.5	0	0
Partner B	6/30	.5	6	3.0
Aggregate deferral				3.0

Test 6/30	Year end	Interest in partnership profits	Months of deferral for 6/30 year end	Interest × deferral
Partner A	12/31	.5	6	3.0
Partner B	6/30	.5	0	0
Aggregate deferral				3.0

Example 4. The facts are the same as in *Example 1* except that on December 31, 1987, partner A sells a 4 percent interest in the partnership to Partner C, who reports income on the fiscal year ending June 30, and a 40 percent interest in the partnership to Partner D, who also reports income on the fiscal year ending June 30. The taxable year beginning July 1, 1987, is unaffected by the sale. However, for the taxable year beginning July 31, 1988, the partnership must determine the taxable year resulting in the least aggregate deferral as of July 1, 1988. In this case, the partnership will be required to retain its taxable year since the fiscal year ending June 30 continues to be the taxable year that results in the least aggregate deferral of income to the partners.

Example 5. The facts are the same as in *Example 4* except that Partner D reports income on the fiscal year ending April 30. As in Example 4, the taxable year during which the sale took place is unaffected by the shifts in interests. However, for its taxable year beginning July 1, 1988, the partnership will be required to change its taxable year to the fiscal year ending April 30. This determination is made as follows:

Test 7/31	Year end	Interest in partnership profits	Months of deferral for 7/31 year end	Interest × deferral
Partner A	6/30	.06	11	.66
Partner B	7/31	.5	0	0
Partner C	6/30	.04	11	.44
Partner D	4/30	.4	9	3.60
Aggregate deferral				4.70

Test 6/30	Year end	Interest in partnership profits	Months of deferral for 6/30 year end	Interest × deferral
Partner A	6/30	.06	0	0
Partner B	7/31	.5	1	.5
Partner C	6/30	.04	0	0
Partner D	4/30	.4	10	4.0
Aggregate deferral				4.5

Test 4/30	Year end	Interest in partnership profits	Months of deferral for 4/30 year end	Interest × deferral
Partner A	6/30	.06	2	.12
Partner B	7/31	.5	3	1.50
Partner C	6/30	.04	2	.08
Partner D	4/30	.4	0	0
Aggregate deferral				1.70

§ 1.706–1(b)(3) Test:	
Current taxable year (June 30)	4.5
Less: Taxable year producing the least aggregate deferral (April 30)	1.7
Additional aggregate deferral (greater than .5)	2.8

Example 6. (i) Partnership P has two partners, A who reports income on the fiscal year ending March 31, and B who reports income on the fiscal year ending July 31. A and B share profits equally. P has determined its taxable year under § 1.706–1(b)(3) to be the fiscal year ending March 31 as follows:

Test 3/31	Year end	Interest in partnership profits	Deferral for 3/31 year end	Interest × deferral
Partner A	3/31	.5	0	0
Partner B	7/31	.5	4	2
Aggregate deferral				2

Test 7/31	Year end	Interest in partnership profits	Deferral for 7/31 year end	Interest × deferral
Partner A	3/31	.5	8	4
Partner B	7/31	.5	0	0
Aggregate deferral				4

(ii) In May 1988, Partner A sells a 45 percent interest in the partnership to C, who reports income on the fiscal year ending April 30. For the taxable period beginning April 1, 1989, the fiscal year ending April 30 is the taxable year that produces the least aggregate deferral of income to the partners. However, under paragraph (b)(3)(iii) of this section the partnership is required to retain its fiscal year ending March 31. This determination is made as follows:

Test 3/31	Year end	Interest in partnership profits	Deferral for 3/31 year end	Interest × deferral
Partner A	3/31	.05	0	0
Partner B	7/31	.5	4	2.0
Partner C	4/30	.45	1	.45
Aggregate deferral				2.45

Test 7/31	Year end	Interest in partnership profits	Deferral for 7/31 year end	Interest × deferral
Partner A	3/31	.05	8	.40
Partner B	7/31	.5	0	0
Partner C	4/30	.45	9	4.05
Aggregate deferral				4.45

Test 4/30	Year end	Interest in partnership profits	Deferral for 4/30 year end	Interest × deferral
Partner A	3/31	.05	11	.55
Partner B	7/31	.5	3	1.50
Partner C	4/30	.45	0	0
Aggregate deferral				2.05

§ 1.706–1(b)(3) Test:	
Current taxable year (3/31)	2.45
Less: Taxable year producing the least aggregate deferral (4/30)	2.05
Additional aggregate deferral (less than .5)	.40

(4) *Measurement of partner's profits and capital interest*— (i) *In general.* The rules of this paragraph (b)(4) apply in determining the majority interest taxable year, the principal partners' taxable year, and the least aggregate deferral taxable year.

(ii) *Profits interest*—(A) *In general.* For purposes of section 706(b), a partner's interest in partnership profits is generally the partner's percentage share of partnership profits for the current partnership taxable year. If the partnership does not expect to have net income for the current partnership taxable year, then a partner's interest in partnership profits instead must be the partner's percentage share of partnership net income for the first taxable year in which the partnership expects to have net income.

(B) *Percentage share of partnership net income.* The partner's percentage share of partnership net income for a partnership taxable year is the ratio of: the partner's distributive share of partnership net income for the taxable year, to the partnership's net income for the year. If a partner's percentage share of partnership net income for the taxable year depends on the amount or nature of partnership income for that year (due to, for example, preferred returns or special allocations of specific partnership items), then the partnership must make a reasonable estimate of the amount and nature of its income for the taxable year. This estimate must be based on all facts and circumstances known to the partnership as of the first day of the current partnership taxable year. The partnership must then use this estimate in determining the partners' interests in partnership profits for the taxable year.

(C) *Distributive share.* For purposes of this paragraph (b)(4)(ii), a partner's distributive share of partnership net income is determined by taking into account all rules and regulations affecting that determination, including, without limitation, section 704(b), (c), and (e), section 736, and section 743.

(iii) *Capital interest.* Generally, a partner's interest in partnership capital is determined by reference to the assets of the partnership that the partner would be entitled to upon withdrawal from the partnership or upon liquidation of the partnership. If the partnership maintains capital accounts in accordance with § 1.704–1(b)(2)(iv), then for purposes of section 706(b), the partnership may assume that a partner's interest in partnership capital is the ratio of the partner's capital account to all partners' capital accounts as of the first day of the partnership taxable year.

(5) *Certain tax-exempt partners disregarded.* [Reserved]

(6) *Foreign partners.* [Reserved]

(7) *Adoption of taxable year.* A newly-formed partnership may adopt, in accordance with § 1.441–1(c), its required taxable year, a 52–53-week taxable year ending with reference to its required taxable year, or a taxable year elected under section 444 without securing the approval of the Commissioner. If a newly-formed partnership wants to adopt any other taxable year, it must establish a business purpose and secure the approval of the Commissioner under section 442.

(8) *Change in taxable year*—(i) *Partnerships*—(A) *Approval required.* An existing partnership may change its taxable year only by securing the approval of the Commissioner under section 442 or making an election under section 444. However, a partnership may obtain automatic approval for certain changes, including a change to its required taxable year, pursuant to administrative procedures published by the Commissioner.

(B) *Short period tax return.* A partnership that changes its taxable year must make its return for a short period in accordance with section 443, but must not annualize the partnership taxable income.

(C) *Change in required taxable year.* If a partnership is required to change to its majority interest taxable year, then no further change in the partnership's required taxable year is required for either of the two years following the year of the change. This limitation against a second change within a three-year period applies only if the first change was to the majority interest taxable year and does not apply following a change in the partnership's taxable year to the principal partners' taxable year or the least aggregate deferral taxable year.

(ii) *Partners.* Except as otherwise provided in the Internal Revenue Code or the regulations thereunder (e.g., section 859 regarding real estate investment trusts or § 1.442–2(c) regarding a subsidiary changing to its consolidated parent's taxable year), a partner may not change its taxable year without securing the approval of the Commissioner under section 442. However, certain partners may be eligible to obtain automatic approval to change their taxable years pursuant to the regulations or administrative procedures published by the Commissioner. A partner that changes its taxable year must make its return for a short period in accordance with section 443.

(9) *Retention of taxable year.* In certain cases, a partnership will be required to change its taxable year unless it obtains the approval of the Commissioner under section 442, or makes an election under section 444, to retain its current taxable year. For example, a partnership using a taxable year that corresponds to its required taxable year must obtain the approval of the Commissioner to retain such taxable year if its required taxable year changes as a result of a change in ownership, unless the partnership previously obtained approval for its current taxable year or, if appropriate, makes an election under section 444.

(10) *Procedures for obtaining approval or making a section 444 election.* See § 1.442–1(b) for procedures to obtain the approval of the Commissioner (automatically or otherwise) to adopt, change, or retain a taxable year. See §§ 1.444–1T and 1.444–2T for qualifications, and § 1.444–3T for procedures, for making an election under section 444.

* * * * *

(d) *Effective date.* The rules of this section are applicable for taxable years ending on or after the date these regulations are published in the **Federal Register** as final regulations, except for paragraph (c) which applies for taxable years beginning after December 31, 1953.

§ 1.706–1T [Removed]

Par. 8. Section 1.706–1T is removed.

Par. 9. Section 1.898–4, as proposed to be added at 58 FR 297, January 5, 1993, is amended by adding paragraph (c)(3)(iv) to read as follows:

§ 1.898–4 Special rules.

* * * * *

(c) * * *

(3) * * *

(iv) *Recognition of income and deductions.* See § 1.441–2(e) for rules regarding the recognition of income and deductions (e.g., amounts includible in gross income pursuant to sections 951(a) or 553) if either the majority United States shareholder, or the specified foreign corporation, or both, elect to use a 52–53-week taxable year under this paragraph (c)(3).

* * * * *

Par. 10. Section 1.1378–1 is added under the undesignated centerheading ''Small Business Corporations and Their Shareholders'' to read as follows:

§ 1.1378–1 Taxable year of S corporation.

(a) *In general.* The taxable year of an S corporation must be a permitted year or a taxable year elected under section 444. No corporation may make an election to be an S corporation for any taxable year unless the taxable year is a permitted year or a taxable year elected under section 444. In addition, an S corporation may not change its taxable year to any taxable year other than a permitted year or a taxable year elected under section 444. A permitted year is the required taxable year (i.e., a taxable year ending on December 31), a 52–53-week taxable year ending with reference to the required taxable year, or any other taxable year for which the corporation establishes a business purpose to the satisfaction of the Commissioner under section 442.

(b) *Adoption of taxable year.* An electing S corporation may adopt, in accordance with § 1.441–1(c), its required taxable year, a 52–53-week taxable year ending with reference to its required taxable year, or a taxable year elected under section 444 without the

approval of the Commissioner. See § 1.441–1. An electing S corporation that wants to adopt any other taxable year, must establish a business purpose and obtain the approval of the Commissioner under section 442.

(c) *Change in taxable year.* An S corporation or electing S corporation that wants to change its taxable year must obtain the approval of the Commissioner under section 442 or make an election under section 444. However, an S corporation or electing S corporation may obtain automatic approval for certain changes, including a change to its required taxable year, pursuant to administrative procedures published by the Commissioner.

(d) *Retention of taxable year.* In certain cases, an S corporation or electing S corporation will be required to change its taxable year unless it obtains the approval of the Commissioner under section 442, or makes an election under section 444, to retain its current taxable year. For example, a corporation using a June 30 fiscal year that elects to be an S corporation and, as a result, is required to use the calendar year must obtain the approval of the Commissioner to retain its current fiscal year.

(e) *Procedures for obtaining approval or making a section 444 election*—(1) *In general.* See § 1.442–1(b) for procedures to obtain the approval of the Commissioner (automatically or otherwise) to adopt, change, or retain a taxable year. See §§ 1.444–1T and 1.444–2T for qualifications, and 1.444–3T for procedures, for making an election under section 444.

(2) *Special rules for electing S corporations.* An electing S corporation that wants to adopt, change to, or retain a taxable year other than its required taxable year must request approval of the Commissioner on Form 2553 (Election by a Small Business Corporation) when the election to be an S corporation is filed pursuant to section 1362(b) and § 1.1362–6. See § 1.1362–6(a)(2)(i) for the manner of making an election to be an S corporation. If such corporation receives permission to adopt, change to, or retain a taxable year other than its required taxable year, the election to be an S corporation will be effective. Denial of the request renders the election ineffective unless the corporation agrees that, in the event the request to adopt, change to, or retain a taxable year other than its required taxable year is denied, it will adopt, change to, or retain its required taxable year or, if applicable, make an election under section 444.

(f) *Effective date.* The rules of this section are applicable for taxable years ending on or after the date these regulations are published in the **Federal Register** as final regulations.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 11. The authority citation for part 5c continues to read as follows:

Authority: 26 U.S.C. 168(f)(8)(G) and 7805.

§ 5c.442–1 [Removed]

Par. 12. Section 5c.442–1 is removed.

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 13. The authority citation for part 5f continues to read in part as follows:

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

§ 5f.442–1 [Removed]

Par. 14. Section 5f.442–1 is removed.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 15. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 18.1378–1 [Removed]

Par. 16. Section 18.1378–1 is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–13536 Filed 6–12–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–046]

RIN 2115–AE46

Special Local Regulations for Marine Events; Fireworks Displays, Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for fireworks displays to be held over the waters of the Patapsco River, Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to temporarily restrict vessel traffic in the Patapsco River to protect spectator craft and other vessels transiting the event area from the dangers associated with the fireworks.

DATES: Comments and related material must reach the Coast Guard on or before August 13, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. Commander (Aoax), Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–046), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Baltimore Office of Promotions sponsors fireworks displays at various times throughout the year over the waters of the Patapsco River, Inner Harbor and Northwest Harbor, near Baltimore, Maryland. The events consist of pyrotechnic displays fired from two barges positioned in the Inner Harbor and Northwest Harbor. A large fleet of spectator vessels gathers nearby to observe the fireworks. Due to the need for vessel control during the fireworks displays, vessel traffic would be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish special local regulations on specified waters of the Patapsco River. The special local regulations would temporarily restrict general navigation in the event area during the fireworks. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement time period. These regulations are needed to control vessel traffic during the fireworks displays to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed rule will prevent traffic from transiting a portion of the Patapsco River during the events, the economic effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

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

This proposed rule would affect the owners or operators of vessels, some of whom may be small entities, intending to transit or anchor in the effected portions of the Patapsco River during the events.

Although this regulation would prevent traffic from transiting or anchoring in portions of the Patapsco River during the event, the economic effect of this regulation would not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this proposed rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

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

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

2. Section 100.526 is added to read as follows:

§ 100.526 Fireworks Displays, Patapsco River, Baltimore, Maryland.

(a) *Definitions*—(1) *Inner Harbor Regulated Area.* The Inner Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16.9′ N, longitude 076°36.3′ W. All coordinates reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The Northwest Harbor Regulated Area is defined as the waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16.6' N, longitude 076°35.8′ W. All coordinates reference Datum NAD 1983.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(4) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the Inner Harbor Regulated Area or the Northwest Harbor Regulated Area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates:* This section is effective:

(1) Annually from 8:30 p.m. on July 4 until 9:30 p.m. on July 4; and

(2) Annually from 11:45 p.m. on December 31 until 12:45 a.m. on January 1.

(d) *Rain Dates:* If the July 4 fireworks display is cancelled for the evening due to inclement weather, then this section is effective between 8:30 p.m. and 9:30 p.m. on July 5. If the December 31 fireworks display is cancelled for the evening due to inclement weather, then this section is effective from 11:45 p.m. on January 1 until 12:45 a.m. on January 2. Notice of the effective period will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: 23 May 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 01–14819 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11–01–008]

RIN 2115–AA97

Security Zone; Naval Supply Center Pier, San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent security zone around the Naval Supply Center Pier at Naval Base, San Diego, at the request of the U.S. Navy. The establishment of this security zone is needed to ensure the physical protection of naval vessels moored at the Naval Supply Center Pier.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments may be mailed to LTJG Erin Calvert, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6477. The Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Patricia Springer, Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951; e-mail pspringer@d11.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or any other materials to the address listed under **ADDRESSES**. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking, the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process. Persons may request a public hearing by writing to the address listed above in **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to create a permanent security zone around the Naval Supply Center Pier at Naval Base, San Diego. The security zone consists of the waters of San Diego Bay extending approximately 100 feet out from the north, west, and south sides of the Naval Supply Center Pier.

Currently, there is a restricted area around the Naval Supply Center Pier, 33 CFR 334.870(d). The Navy believes that this restricted area, by itself, is insufficient to adequately safeguard its vessels. The Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The creation of this security zone will safeguard vessels moored at the Naval Supply Center Pier and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. The creation of this security zone will also prevent recreational and commercial craft from interfering with

military operations involving naval vessels and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. Unlike the current restricted area, under this proposed rule entry into, transit through, or anchoring within this security zone would be prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1121 is added to read as follows:

§ 165.1121 Security Zone: San Diego, CA.

(a) Location. The following area is a security zone: the waters of San Diego Bay extending approximately 100 feet from the north, west, and south sides of the Naval Supply Center Pier enclosed by lines connecting the following points: Beginning at 32°42′50″ N, 117°10′25″ W (Point A); to 32°42′50″ N, 117°10′38″ W (Point B); to 32°42′54″ N, 117°10′38″ W (Point C); to 32°42′54″ N, 117°10′25″ W (Point D).

(b) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego. Section 165.33 also contains other general requirements.

(c) The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: May 22, 2001.

E.R. Riutta,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 01–14821 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11–01–011]

RIN 2115–AA97

Security Zone; Naval Amphibious Base, San Diego Bay, CA.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a permanent security zone around the Naval Amphibious Base, Coronado, California, at the request of the U.S. Navy. This security zone will be established inside an already exiting restricted area defined by the U.S. Navy maintained buoys. The establishment of this security zone is needed to ensure the physical protection of naval vessels and their activities at Naval Base, Coronado.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments may be mailed to LT Kathleen Garza, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6477. The Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Patricia Springer, Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951; e-mail pspringer@d11.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or any other materials to the address listed under **ADDRESSES**. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking, the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process. Persons may request a public hearing by writing to the address listed above in **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to create a permanent security zone around the Naval Amphibious Base, Coronado, California, at the request of the U.S. Navy. The security zone will consist of the waters of San Diego Bay around the perimeter of the Naval Amphibious Base, extending approximately 100 yards out.

Currently, there is a restricted area around the Naval Amphibious Base, 33 CFR 334.860. The Navy believes that this restricted area, by itself, is insufficient to adequately safeguard its vessels and the military operations involving the base. The Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The creation of this security zone will safeguard vessels moored at the Naval Amphibious Base and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. The creation of this security zone will also prevent recreational and commercial craft from interfering with military operations involving naval vessels and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. Unlike the current restricted area, under this proposed rule entry into, transit through, or anchoring within this security zone would be prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1120 is added to read as follows:

§ 165.1120 Security Zone: San Diego, CA.

(a) Location. The following area is a security zone: the waters of San Diego Bay, enclosed by lines connecting the following points: Beginning at 32°40′30.0″ N, 117°10′03.0″ W (Point A); thence running northeasterly to 32°40′54.0″ N, 117°09′35.5″ W (Point B); thence running northeasterly to 32°40′55.0″ N, 117°09′27.0″ W (Point C); thence running southeasterly to 32°40′43.0″ N, 117°09′09.0″ W (Point D); thence running southerly to 32°40′39.0″ N, 117°09′08.0″ (Point E); thence running southwesterly to 32°40′30.0″ N, 117°09′12.9″ W (Point F); thence running a short distance to 32°40′29.0″ N, 117°09′14.0″ W (Point G); thence running southwesterly to 32°40′26.0″ N, 117°09′17.0″ W (Point H); thence running northwesterly to the shoreline to 32°40′31.0″ N, 117°09′22.5″ W (Point I).

(b) In accordance with the general regulations in §165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego.

(c) The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: May 22, 2001.

E.R. Riutta,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 01–14820 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–034–FIN; FRL–69964]

Clean Air Act Redesignation and Reclassification, Searles Valley Nonattainment Area; Designation of Coso Junction, Indian Wells Valley, and Trona Nonattainment Areas; Reclassification of Coso Junction and Indian Wells Valley Nonattainment Areas; California; Particulate Matter of 10 Microns or Less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to change the boundaries of the Searles Valley, California moderate PM–10 nonattainment areas (NA) by dividing that area into three separate NAs: Coso Junction, Indian Wells Valley, and Trona. Because air quality violations or inadequate monitoring data, EPA is also proposing to find that the proposed Coso Junction and Indian Wells Valley NAs have not attained the 24-hour and annual PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. EPA is further proposing to find that the proposed Trona NA has attained the 24-hour and annual NASQS.

If EPA takes final action on this proposal, the Searles Valley NA would be split into three new NAs, and the Coso Junction and Indian Wells Valley NAs would be reclassified by operation of law as serious PM–10 NAs under section 188(b)(2)(A) of the CAA. The classification of the proposed Trona PM–10 NA would remain moderate.

DATES: Comments on this proposed action must be received in writing by August 13, 2001.

ADDRESSES: Comments should be addressed to John Ungvarsky, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1286, ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NAAQS are safety thresholds for certain ambient air pollutants set by

EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard. PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas with PM–10 levels exceeding health standards and meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM–10 nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classification were codified in 40 CFR part 81 in a **Federal Register** notice published on November 6, 1991 (56 FR 56694). The Searles Valley planning area was designated nonattainment and classified as moderate. See 40 CFR 81.305.

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS by no later than December 31, 1994. Pursuant to section 189(a)(2), those SIP revisions were to be submitted to EPA by November 15, 1991.

Situated at the southeastern end of the Sierra Nevada Mountains, the Searles Valley NA includes portions of three counties (i.e., Inyo, Kern, and San Bernardino) with its boundaries defined by United States Geological Survey (USGS) Hydrologic Unit #18090205, an area of approximately 2000 square miles. 40 CFR 81.305.

Because of the nature of the PM–10 exceedances and the local jurisdictional boundaries within the NA, the California Air Resources Board (CARB) has historically treated the Searles Valley NA as three separate planning subregions. When the original moderate area SIP was developed in 1991, the PM–10 exceedances that formed the basis for the planning strategies were determined to be caused by local sources in each of the subregions.[1]

County boundaries have also played a major role in the apportionment of planning responsibilities and development of subregions within the Searles Valley NA. The Inyo County portion of the NA is under the jurisdiction of the Great Basin Air Pollution Control District (APCD) and is referred to as the Coso Junction subregion. The Kern County portion is under the jurisdiction of the Kern County APCD and is referred to as the Indian Wells Valley subregion.[2] The San Bernardino County portion is under the jurisdiction of the Mojave Desert Air Quality Management District (AQMD) and is referred to as the Trona subregion.

In October 1993, CARB submitted to EPA a moderate area SIP jointly developed by the Great Basin Unified APCD, Kern County APCD, and Mojave Desert AQMD. The affected districts asserted, and CARB concurred, that three distinct, localized and independent PM–10 problems existed in the Searles Valley NA.[3] To support this division, CARB explained that the hydrologic zone that defines the boundaries of the NA actually encompasses three separate valleys. CARB indicated that the valleys are distinct from one another and do not appear to share the same PM–10 exceedances and stated that localized strategies can be justified on the basis of geography and topography. See Boyd letter.[4]

Although CARB has historically treated the Searles Valley NA as three separate planning areas, they did not officially request the area be divided into three NAs until very recently.

II. Rationale for Establishing Coso Junction, Indian Wells Valley, and Trona as new Nonattainment Areas

A. CARB's Request

On May 4, 2001, CARB submitted to EPA a request under CAA section 107(d)(3)(D) to revise the boundaries for the Searles Valley NA by dividing the area into three separate PM–10 nonattainment areas, Coso Junction, Indian Wells Valley, and Trona, to be separated along the Inyo, Kern, and San Bernardino county lines within the Searles Valley NA. Together, the three proposed NAs would cover the same geographic area as the existing Searles Valley PM–10 NA.[5]

Under section 107(d)(3)(D), the Governor of any State, on the Governor's own motion, is authorized to submit to the Administrator a revised designation[6] of any nonattainment area or portions thereof within the State. In determining whether to approve or deny a State's request for a revision to the designation of an area under section 107(d)(3)(D), EPA uses the same factors Congress directed EPA to consider when the Agency initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include ''air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.''

B. Air Quality Data and Related Considerations

As discussed below, air quality data for the Searles Valley NA and analysis of wind patterns indicate that the recorded exceedances of the 24-hour PM–10 NAAQS during the 1992 through 2000[7] time frame in the Coso Junction and Indian Wells Valley subregions are not the result of transport between the subregions in the NA area.

1. Coso Junction

From April 1993 through May 1996, the Great Basin Unified APCD conducted a study of PM–10 transport from Owens Valley.[8] The study showed that wind blown dust from the Owens Valley PM–10 nonattainment area, specifically emissions from the Owens (dry) Lake, contributed to the monitored exceedances at Coso Junction. The study documented that when exceedances occurred in Coso Junction, the winds were from the north. This factor alone eliminates the possibility of sources from Indian Wells Valley and Trona

[1] ''PM–10 State Implementation Plan for the Searles Valley Planning Area, Draft Final,'' November 1991, pages 2–7.

[2] Prior to 1997, this area was referred to as the China Lake subregion.

[3] Letter from James D. Boyd, Executive Officer, CARB, to Felicia Marcus, Regional Administrator, EPA Region IX, dated October 28, 1993 (Boyd letter).

[4] Subsequent to the October 1993 submittal and in further support of the Districts' and CARB's assertion that the PM–10 problems in the Searles Valley nonattainment area are distinct, on July 2, 1996, CARB submitted to EPA a redesignation request and maintenance plan for the Trona subregion, and on July 28, 1997, CARB submitted to EPA a redesignation request and maintenance plan for the Indian Wells Valley subregion. EPA is not acting on these submittals in today's notice.

[5] Letter from Michael Kenny, Executive Officer, CARB, to Laura Yoshii, Acting Regional Administrator, EPA Region IX, dated May 4, 2001 (Kenny letter).

[6] Boundary changes are an inherent part of a designation or redesignation of an area under the CAA. See CAA section 107(d)(1)(B)(ii).

[7] Data for the 1992–2000 period is provided in IV.B as support for EPA's proposed division of the Searles Valley NA into three separate NAs. For purposes of the proposed findings discussed in sections IV and V of this notice, EPA is relying on data from the 1992–1994 time frame.

[8] See letter from Duane Ono, Great Basin Unified APCD, to John Kennedy, EPA Region IX, dated March 26, 2001 (Ono letter) enclosing Owens Study.

contributing to the exceedances in Coso Junction since these subregions are located to the south of Coso Junction. Since the completion of the transport study, two exceedances occurred in the Coso Junction subregion. The Great Basin Unified APCD has indicated that at least one of these exceedances was attributed to wind blown dust from the Owens Valley NA.[9]

2. Indian Wells Valley

In April 1995 and March 1998, the Indian Wells Valley subregion exceeded the 24-hour PM–10 NAAQS. The 1995 exceedance was captured as part of the Great Basin Unified APCD's transport study and, like the same day exceedance at Coso Junction, appears to have been caused when winds were from the north, thus implicating Owens Lake in the adjacent Owens Valley NA, and not Trona sources, as a likely contributor to the exceedance. See Ono letter. The cause of the 1998 exceedance (165 ug/m^3) is currently being analyzed by CARB. In this instance, the exceedance occurred when winds were from the south, which eliminates the possibility of sources in Trono or Coso Junction contributing to the exceedance. In addition, the corresponding same-day PM–10 values in Coso Junction (21 ug/m^3) and Trona (24 ug/m^3) were well below the 24-hour PM–10 NAAQS, an indication that the sources causing the exceedance in Indian Wells Valley did not impact PM–10 levels in the Coso Junction or Trono subregions.

3. Trona

The Tronba subregion has not recorded an exceedance of the 24-hour PM–10 NAAQS since 1990.

C. Planning and Control Considerations

Each of the subregions in the Searles Valley NA is associated with a separate valley in the NA. The corresponding topography of the valleys limits the transport of PM–10 emissions between the Searles Valley subregions. See Kenny letter. With the exception of transport of PM–10 from Owens Lake into Searles Valley, as described above, there is no indication or record of sources in any one subregion impacting PM–10 levels in an adjacent subregion.

The proposed Coso Junction NA corresponds with the current Coso Junction subregion planning area and the Rose Valley. The Rose Valley is bounded by the Coso Range to the east and south. The Sierra Nevada Range bounds the Valley to the west, and the intersection of the two ranges makes up the northern boundary.

The proposed Indian Wells Valley NA corresponds with the current Indian Wells Valley subregion planning area and the Indian Wells Valley. This valley is bounded by the Argus Range to the east, the Sierra Nevada Range to the west. The El Paso Mountains bound the southern area, and the Coso Range closes off the northern end.

The proposed Trona NA corresponds with the Trona subregion planning area and the Searles Valley, which contains the Searles (dry) Lake. This valley is bounded by the Slate Range to the east and Argus Range to the west. These two ranges join together at the north and south to fully encompass the Searles (dry) Lake. The Mojave Desert AQMD is primarily responsible for this subregion, although a small portion of Inyo County, which is under the jurisdiction of Great Basin Unified APCD, falls within the proposed Trona NA.

These valleys are distinct from one another and do not share the same PM–10 exceedances. As a result, separate NAs with localized strategies on the basis of the area's geography and topography are appropriate.

In addition, as stated earlier, CARB's moderate area SIP incorporates an attainment strategy and demonstration for each of the respective subregions corresponding to the jurisdictions of the three local air districts. Subsequent SIP revisions for the Searles Valley NA have been prepared and adopted by the responsible air district in each subregion, each reflecting the unique contributors to nonattainment under its jurisdiction. These administrative and planning considerations further support CARB's request that the Searles Valley NA be divided into three separate NAs.

Based on the State's request and consideration of the supporting factors described above, we are today proposing to change the boundaries for the Searles Valley NA by dividing the area into the Coso Junctiuon, Indian Wells Valley and Trona NAs reflecting the historical subregional divisions that have been in place since the early 1990's.

III. Proposed Boundaries for the Proposed Coso Junction, Indian Wells Valley and Trona Nonattainment Areas

The proposed Coso Junction NA boundaries would consist of the portion of Inyo County contained within USGS Hydrologic Unit #18090205. The proposed Indian Wells Valley NA boundaries would include the portion of Kern County contained within USGS Hydrologic Unit #18090205. The proposed Trona NA boundaries would include the portion of the San Bernardino County contained within USGS Hydrologic Unit #18090205. The combination of these three proposed NAs would comprise the same area included in the Searles Valley NA as set forth in 40 CFR 81.305.

IV. Proposed Findings of Attainment and Nonattainment

A. Clean Air Act Requirements

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this requirement. For the Searles Valley, the attainment date was December 31, 1994. Therefore, for purposes of the attainment finding, EPA must use monitoring data from 1992–1994. EPA makes the determinations of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area. These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration is equal to or less than 50 μg/m^3. Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 μug/m^3 limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM–10.

The proposed findings pursuant to CAA sections 179(c) and 188(b)(2) for the proposed Coso, Indian Wells Valley and Trona NAs are discussed below and are based on air quality data for 1992–1994, the 3 years up to and including the attainment deadline year. In addition, more recent data support our proposal.[10]

B. Ambient Air Monitoring Data

As stated above, the 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3 is equal to or less than one. In general, the number of expected exceedances at a site which samples every day is determined by recording the number of exceedances in each calendar year and then averaging them over the past three

[9] See Ono letter.

[10] See Table 3.

calendar years. For sites which do not sample every day, EPA requires the adjustment of observed exceedances to account for days not sampled. The procedures for making the adjustment are specified in 40 CFR part 50, appendix K.

In addition, an important consideration in making air quality determinations for both the 24-hour and annual standards is data completeness. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days. EPA requires pollutant data sets to be complete according to this definition in order for us to determine that an area is in attainment of the PM—10 NAAQS. For example, if an area samples for PM–10 on a one in six day sampling schedule, there would be 60–61 samples scheduled to be collected in a given calendar year or 15–16 samples in a calendar quarter. In order for a PM–10 data set to be deemed complete, an agency must collect 75 percent of the scheduled samples in a quarter. See 40 CFR part 50, appendix K.

EPA recognizes that data from some scheduled sampling days may be missing for any number of reasons, e.g. damaged filters (sample loss), miscalibrated equipment, or other equipment failure. 40 CFR part 50, appendix K specifies a minimum 75 percent data capture rate of required PM–10 samples, but states that ''data not meeting these criteria may also suffice to show attainment, however, such exceptions will have to be approved by the Regional Administrator in accordance with established guidelines.''

EPA has provided guidance on how and when the Agency can make attainment findings when the data capture rate is less than 75 percent per calendar quarter. See ''Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards,'' Office of Air Quality Planning and Standards, April 1987 (hereafter referred to as ''data substitution policy''). There are minimum criteria that must be met in order for EPA to utilize this policy. For areas that have two or more years of monitoring data, there must be at least 50 percent of the required samples in each quarter and at least one of the years must indicate attainment based on monitored concentrations that meet the minimum 75 percent data capture requirement. The policy may also be used if only one year of every day sampling is available and the data capture rate exceeds 75 percent in each quarter.

In the case of the Searles Valley NA, there are three monitoring sites that need to be evaluated in our determination of the area's attainment status. In the 1992–1994 period, the sites in Coso Junction and Indian Wells Valley have at least one year that did not meet the 75 percent data completeness criteria. Since none of the sites samples on an every day schedule, we need to evaluate whether they met the requirement of having at least 50 percent data capture for those quarters not meeting the 75 percent data capture requirement. The guidance document cited above allows for the substitution of missing data using monitored data from the same quarter in anyone of the years used to determine attainment. The maximum PM–10 value that was observed in that quarter over the attainment period may be substituted for missing scheduled sampling days, provided emissions and meteorology for these quarters are representative of the emissions and meteorology for the quarter in question.

In evaluating the data for the proposed Coso, Indian Wells Valley and Trona NAs, EPA considered the actual recorded PM–10 concentrations for 1992–1994, the sampling frequency of the monitors used in the PM–10 network, and the completeness of the data collected.

1. 24-hour Standard

Table 1 presents a summary of the data collected for the 24-hour standard in the Searles Valley NA during 1992–1994.

TABLE 1.—SUMMARY OF SEARLES VALLEY 24-HOUR PM–10 AIR QUALITY DATA 1992–1994

[NAAQS=50 micrograms per cubic meter (μg/m³)]

Site Name	Year	Maximum 24-hour concentration (μg/m³)	Number of observed exceedances	Number of estimated exceedances	Data 75 percent complete? Y/N
Coso Junction	1992	38	0	Cannot be determined	No.
	1993	254	2	8.4	Yes.
	1994	388	1	4.1	Yes.
Indian Wells (China Lake)[11]	1992	39	0	Cannot be determined	No.
	1993	50	0	Cannot be determined	No.
	1994	26	0	Cannot be determined	No.
Trona	1992	105	0	0	Yes.
	1993	79	0	0	Yes.
	1994	107	0	0	Yes.

Source: Aerometric Information Retrieval System/Air Quality Subsystem (AIRS/AQS).

Based on the air quality data presented above, EPA proposes to find that the proposed Coso NA did not attain the 24-hour PM–10 NAAQS during the 1992–1994 period.

For the proposed Indian Wells Valley NA, data collection was inadequate and the data substitution policy cannot be used because the monitor did not collect at lasts 50 percent of the scheduled samples during certain quarters in the 1992–1994 period. As a result, EPA cannot make a fining of attainment of the proposed Indian Wells Valley NA for the 24-hour standard and must propose instead to find that this area also failed to attain the 24-hour standard for the 1992–1994 period.

For the proposed Trona NA, EPA proposes to find that the area attained the 24-hour PM–10 NAAQS during the 1992–1994 period.

[11] As stated previously in this notice, in 1997 the China Lake subregion was renamed Indian Wells Valley. However the monitoring site which represents this subregion is still called China Lake in EPA's AIRS/AQS database.

2. Annual Standard

The 1992–1994 annual average for each monitoring site is provided in Table 2.

TABLE 2.—ANNUAL AVERAGE PM–10 CONCENTRATION (μG/M³) FOR SEARLES VALLEY NONATTAINMENT AREA FOR 1992–1994

[NAAQS = 50μg/m³]

Site name and year	Annual average (μg/m³)	Data 75 percent complete? Y/N	3 year annual average (μg/m³)
Coso Junction:			
1992	*14	No	
1993	28	Yes	*22
1994	23	Yes	
Indian Wells (China Lake):			
1992	*21	No	
1993	23	No	*20
1994	*17	No	
Trona:			
1992	37	Yes	
1993	37	Yes	34
1994	28	Yes	

*Because the data set for the year is not complete, an accurate annual average that meets EPA regulatory requirements cannot be calculated. Furthermore, since the Coso Junction and Indian Wells Valley monitoring sites have quarters which do not meet the minimum 50 percent capture rate, EPA cannot utilize the data substitution policy. The number reported here is simply based on the available data.

Source: Aerometric Information Retrieval System/Air Quality Subsystem (AIRS/AQS)

The monitoring sites for the proposed Coso and Indian Wells Valley NAs did not meet the 75 percent data completeness requirement. Furthermore, some quarters of data at each site also did not meet the 50 percent minimum data capture requirement. Therefore, EPA's data substitution policy cannot be used and EPA must propose to find that the proposed Coso Junction and Indian Wells Valley NAs failed to attain the annual standard for the 1992–1994 period.

For the proposed Trona NA, EPA proposes to find that the area attained the annual standard during the 1992–1994 period.

3. Post-1994 Exceedances Support EPA's Proposed Action

Exceedances of the 24-hour NAAQS [12] occurring during the 1995 through 2000 time frame in the proposed Coso Junction and Indian Wells Valley NAs are listed in Table 3. No exceedances were recorded during the period in the proposed Trona NA.

TABLE 3.—SEARLES VALLEY NA MONITORING SITES EXCEEDING THE 24-HOUR PM–10 NAAQS DURING 1995–2000

[NAAQS=150 μg/m³]

Site and Date of Exceedance	Exceedance (μg/m³
Coso Junction, Rest Area on Hwy 395:	
4/8/95	692
4/21/95	337
5/23/96	309
3/18/98	409
Coso Junction 10 miles east of Coso Junction:	
4/9/95	597
4/21/95	268
3/6/98	246
Indian Wells Valley[13] 100 Las Flores Ave, Ridge Crest:	
4/8/95	235
Indian Wells Valley, Powerline Road, China Lake:	
3/23/98	165

[13] The Las Flores Avenue monitor was a special purpose monitor included in the Owens Lake transport study. It was sporadically operated during the 1993–1996 study, "Air Quality Impacts Downwind of Owens Lake," by the Great Basin Unified APCD, June 1997 (Owens Study). EPA's policy on the use of special purpose monitoring data is described in an EPA memorandum entitled "Agency Policy on the Use of Special Purpose Monitoring Data" from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors, August 22, 1997.

V. Proposed Reclassifications and SIP Requirements for Serious Areas

Under CAA section 188(b)(2)(A), a moderate PM–10 nonattainment area must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a notice in **Federal Register** identifying those areas that failed to attain the standard and the resulting reclassifications. Because the Searles Valley moderate NA has a statutory deadline of December 31, 1994, EPA is required to base its original determination of whether the area attained the PM–10 standards on data from 1992–1994. See section IV above. For this period, for both the 24-hour and annual standards, EPA is proposing to find that the proposed Coso Junction and Indian Wells Valley NAs did not attain. Because EPA is proposing to find that the proposed Trona NA attained the PM–10 standards, it would remain a moderate NA.[14]

PM–10 nonattainment areas reclassified as serious under section 188 (b) (2) of the CAA are required to submit, within 18 months of the Area's reclassification, SIP revisions providing for implementation of best available

[12] There were no recorded exceedances of the annual standard during the 1995–2000 period. However, as discussed in section IV.B.2, there are significant data gaps for both standards from 1992–1994 which are relevant to the attainment status of the area.

[14] If EPA takes final action to create the Trona NA, the area would be redesignated to attainment upon approval by the Agency of a maintenance plan pursuant to CAA section 175A.

control measures (BACM)[15] and a major source definition of 70 tons per year. The SIP must also, among other things, provide for attainment of the PM–10 NAAQS by December 31, 2001.[16] See CAA sections 188 (c) (2) and 189 (b). EPA has provided specific guidance on developing serious area PM–10 SIP revisions. See 59 FR 41998 (August 16, 1994).

Data from the most recent three year period (1998–2000) indicates the proposed Coso Junction and Indian Wells Valley NAs exceeded the PM–10 24-hour NAAQs. The proposed Coso Junction NA recorded two exceedance in March, 1998, and the proposed Indian Wells Valley NA recorded an exceedance March, 1998. In their May 4, 2001 letter[17] to EPA, CARB indicated that it is investigating whether the exceedance in Indian Wells Valley was caused by a natural event.[18] Because of these exceedances, the proposed Coso Junction and Indian Wells Valley NAs do not qualify for redesignation at this time. In order for a nonattainment area to be redesignated to attainment, the area must have three years of clean data and meet the redesignation requirements of section 107 (b) (3) (E) of the CAA.[19]

VI. Summary of Today's Proposals

In today's action, EPA is proposing to divide the Searles Valley NA into three, newly created NAs: Coso Junction, Indian Wells Valley, and Trona. EPA is also proposing to find that the proposed Coso Junction and Indian Wells Valley NAs did not attain the 24-hour and annual PM–10 NAAQS.

VII. Request for Public Comment

The EPA is requesting comment on any or all aspects of today's proposals. As indicated at the outset of this notice, EPA will consider any comments received by August 13, 2001.

[15] BACM must be implemented no later than four years from the date of reclassification.

[16] If certain conditions are met, EPA may extend this attainment deadline to no later than December 31, 2006. CAA section 188 (e).

[17] See footnote 5.

[18] EPA's policy for an exceedance caused by a natural event is explained in a memorandum entitled ''Areas Affected by PM–10 Natural Events'' from Mary Nichols, Assistant Administrator for Air and Radiation, to the EPA Regional offices, May 30, 1996. The State is responsible for establishing a clear casual relationship between the exceedance and the natural event and submitting the documentation to EPA within 180 days of the exceedance, and, at a minimum, developing a Natural Events Action Plan within 18 months of the exceedances.

[19] Memorandum from John Calcagni to Regional Office Air Directors, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Under section 188(b)(2) of the CAA, findings of failure to attain are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in and of themselves, impose any new requirements on any section of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because these requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. The proposed splitting of the Searles Valley NA into three new, separate NAs with a moderate classification will not impose any new requirements on any sectors of the economy because the area is already classified as moderate.

Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These proposed actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) for the following reasons: (1) The proposed finding of failure to attain is a factual determination based on air quality considerations; (2) the resulting reclassification must occur by operation of law and will not impose any federal intergovernmental mandate; and (3) the proposed splitting of the Searles Valley NA into three, new and separate NAs with a moderate classification will not impose any new requirements on any sectors of the economy. For the same reason, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, these proposed actions 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). These proposed actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). because they are not economically significant. Finally, for these same reasons, 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 these proposed actions, 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. These proposed actions do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

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

Authority: 42 U.S.C. 7401–7671q.

Dated: June 5, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–14902 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 01–175]

Wireless E911 Compatibility; Call Back Capability

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document solicits comment regarding the Commission's options with respect to providing public safety answering points (PSAPs) with the ability to call back to obtain further information from 911 calls made from

non-service-initialized mobile wireless phones. The document is precipitated by a request for further consideration filed by several public safety entities and the Commission's recognition that the absence of call back capability is an important public safety issue. The document seeks comment on whether several possible solutions for wireless phones lacking call back capability, or some technical solution applicable to all non-initialized handsets, will further the goals of the Commission's 911 rules, are technically feasible, and cost-effective.

DATES: Comments are due on or before July 9, 2001, and reply comments are due on or before August 8, 2001. Public comments on the information collections are due August 13, 2001, and comments by the Office of Management and Budget (OMB) are due October 11, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Ed Springer, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310. For further information concerning the information collection contained in this Further Notice of Proposed Rulemaking, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 94–102; RM 8143; FCC 01–175, adopted May 23, 2001, and released May 25, 2001. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the FNPRM

1. This FNPRM originated in the Commission's earlier decision in this proceeding, which regards wireless enhanced 911 (E911) service, requiring wireless carriers to forward all 911 calls regardless of their service subscription status and limiting carriers obligations for 911 calls lacking call back capability to delivering the call to the PSAP. (*See* the Report and Order at 61 FR 40348, August 2, 1996, and Memorandum Opinion and Order at 63 FR 02631, January 16, 1998.) These calls include those from non-service initialized phones (noninitialized phones) issued through donor programs, and those from 911 only phones that limit usage to outgoing 911 calls and are incapable of receiving any incoming calls. PSAP call back capability can be critical in wireless E911 situations, where the location of a mobile phone may not be available and the caller may not know his or her precise location or may omit to provide location information to the PSAP.

2. The Commission recently invited comment on this issue in a Public Notice (65 FR 3560, June 5, 2000) in response to a request for further consideration filed by several public safety entities. Conflicting assertions regarding technological constraints on call back capability for noninitialized phones and the importance of the issue from a public safety perspective lead the Commission to conclude that additional information is necessary for an informed decision on this matter. The FNPRM, therefore, solicits comments on possible technical solutions and on several of the Commission's alternatives, including requirements that all carrier-donated handsets be initialized on a limited basis to enable call back by a PSAP and labeled accordingly, and that all 911-only handsets permit call back by the PSAP and be labeled accordingly.

3. A third category of phones exists: noninitialized phones for which the service subscription has lapsed that are retained by the owner or given to friends or family members for emergency use. The FNPRM tentatively concludes that nothing can be done to correct the call back problem for such phones in the absence of a general technical solution to the call back problem because the Commission has no authority to bar the use of such phones or to mandate public education with respect to their limitations. The FNPRM therefore concludes that carrier publicity concerning the problems inherent in the use of noninitialized phones, including those received from friends and family, is the best means of addressing this issues and should be encouraged.

Procedural Matters

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments in response to the FNPRM in CC Docket No. 94–102 and RM–8143 on or before July 9, 2001, and reply comments on or before August 8, 2001. Comments and reply comments should be filed in CC Docket No. 94–102 and should include a separate heading to identify the comments for the Docket Number. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554, with copies to Jane Phillips, Policy Division, Wireless Telecommunications Bureau at 445 Twelfth Street, SW., Washington, DC 20554.

5. Comments also may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-mail/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties also may submit an electronic comment by Internet E-Mail. To obtain filing instructions for E-Mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your E-Mail address>.'' A sample form and directions will be sent in reply.

6. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20037, (202) 857–3800.

Paperwork Reduction Act of 1995 Analysis

7. The actions contained in this FNPRM have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Initial Regulatory Flexibility Analysis—Further NPRM

8. As required by the Regulatory Flexibility Act (RFA) (*See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAA).) Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM), CC Docket No. 94–102. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. This is a summary of the IRFA. The full text of the IRFA may be found in Appendix B of the full text of the FNPRM.

A. Need for, and Objectives of, the FNPRM

9. The FNPRM solicits additional comment regarding enhanced 911 (E911) service to wireless phones without call back capability, including non-service initialized phones issued through donor programs and 911-only phones that limit usage to outgoing 911 calls and are incapable of receiving any incoming calls. Conflicting assertions regarding technological constraints on call back capability for noninitialized phones and the importance of a responsive E911 system in general and of facilitating PSAP response to E911 calls leads the Commission to conclude that additional information is necessary for an informed decision on this matter.

B. Legal Basis for Proposed Rules

10. The proposed action is authorized under Sections 1, 4(i), 7, 10, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 301, 303, 308, 309(j), 310.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

12. The definition of ''small governmental entity'' is one with populations of fewer than 50,000. Of the 85,006 governmental entities in the United States, the Commission estimates that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

13. This FNPRM could result in rule changes that, if adopted, would affect small entities that currently are or may become licensees in the cellular, broadband Personal Communications Services (PCS), or Specialized Mobile Radio Services.

14. Cellular Equipment Manufacturers. A labeling requirement, if adopted, would affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is considerably lower than 920. Under SBA regulations, a ''communications equipment manufacturer,'' which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern. Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities. The Commission estimates that the current action may affect approximately 837 small cellular equipment manufacturers.

15. Cellular Radiotelephone Service. Neither the Commission nor the SBA has developed a definition of small entities specifically for cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone communications. This provides that a small entity is a radio telephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent Telecommunications Industry Revenue data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are combined in the data. The Commission estimates that there are no more than 808 small cellular service carriers that may be affected by these proposals, if adopted.

16. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. The Commission concludes that the number of small

broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, and the 48 winning bidders in the reauction, for a total of approximately 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. In addition, the Commission estimates that the number of additional C & F Block broadband PCS licensees that may ultimately be affected by these proposals could be as many as 422.

17. Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. The auction of the 1,020 SMR geographic area licenses for the 900 MHz SMR band began on December 5, 1995, and was completed on April 15, 1996. Sixty winning bidders for geographic area licenses in the 900 MHz band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

18. The lower 230 channels in the 800 SMR band are divided between General Category channels (the upper 150 channels) and the lower 80 channels. The auction of the 1,053 800 MHz SMR geographic area licenses (1,050–800 MHz licenses for the General Category channels, and 3–800 MHz licenses for the upper 200 channels from a previous auction) for the General Category channels began on August 16, 2000, and was completed on September 2, 2000. At the close of the auction, 1,030 licenses were won by bidders. Eleven winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 2,800 800 MHz SMR geographic area licenses for the lower 80 channels in the 800 MHz SMR service began on November 1, 2000, and was completed on December 5, 2000. Nineteen winning bidders for geographic area licenses for the lower 80 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz bands. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.

19. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. The Commission has adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions. The Commission has held two auctions for Phase II licenses for the 220 MHz band. Fifty-three (53) winning bidders qualified as small or very small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. If certain options discussed in the FNPRM are adopted, all carrier-donated handsets would be required to be initialized on a limited basis to enable call back by a PSAP and labeled accordingly. Furthermore, all 911-only handsets could be required to permit call back by PSAPs and be labeled accordingly. In both instances, this would involve assigning the handsets a phone number and accompanying software upgrades. Details of these proposed requirements are discussed in paragraphs 7 through 19 of the full FNPRM, *supra*. As noted in the FNPRM, the compliance requirements for the various technical alternatives are not fully known. The FNPRM invites comments on alternatives to these options for addressing the call-back issue, and any possible compliance burdens associated with the alternatives.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c).

22. The critical nature of the E911 proceeding in general and in particular of providing PSAPs with the flexibility to contact the caller in an emergency situation limits the Commission's ability to provide small carriers with a less burdensome set of E911 regulations than those placed on large entities. A delayed or less than adequate response to an E911 call can be disastrous regardless of whether a small carrier or a large carrier is involved. The importance of PSAP call back capability in wireless E911 situations is that, in the excitement of a crisis situation, the caller could easily forget to provide the PSAP with location information, and the PSAP might not be able to trace the location of a wireless phone because the individual could be moving from place to place, and may not be able to call the handset user back to verify a location. The PSAP would, at worst, be unable to respond, or would respond on a delayed basis.

23. PSAPs and the majority of wireless carriers who commented on the call-back issue represent two different perspectives on the issue. (*See* paragraph 5 of the FNPRM.) PSAPs, who initially asked that the Commission ''take additional comment and revisit the call back number issues to determine if any further Commission action is necessary or appropriate,'' express concern that noninitialized phones provide either no call back information or outdated or inaccurate information when used in areas where E911 services have been implemented. Comments filed by public service interests assert that a technical solution to the call back issue either exists or can be easily devised to allow PSAPs to identify noninitialized E911 calls and to return the calls if necessary. A majority of wireless service providers, on the other hand, disagree, noting that no viable technical solution has been identified or endorsed by the Wireless E911 Implementation Ad Hoc group.

24. As indicated in paragraph five of the FNPRM, suggestions of record for resolving the problem range from assigning a prescribed series of numbers

or letters to noninitialized phones to notify the PSAP that no call back is possible, to assigning a temporary call back number or emergency service routing key that permits call back. A majority of wireless carriers, in particular, advocate education and labeling requirements to alert consumers to the limitations of E911-only and other noninitialized handsets.

25. In the absence of sufficient information supporting a general technical solution, the Commission is considering several possible solutions to the call-back problem, including a requirement that all carrier-donated handsets be initialized on a limited basis to enable call back by a PSAP and be labeled as such, and a requirement that all 911-only handsets permit call back by a PSAP and bear a label apprising users of their limitations.

26. Paragraphs 9 through 12 of the FNPRM discuss options regarding carrier donated handsets. The most obvious alternative would be for the Commission to decline to adopt any regulation regarding their distribution. The Commission rejects this option as a preliminary matter because it would effectively nullify the benefits of E911 where the PSAP is unable to ascertain the location or needs of an E911 caller. Another alternative would be for the Commission to adopt a regulation merely requiring that donors label donated handsets and provide associated guidance to donees regarding their handset's lack of call back capability. The labeling option would focus the user on the urgency of the E911 caller's providing location information immediately upon contacting the PSAP, and would be easier and less expensive for carriers than a limited initialization solution. However, the Commission has concerns that a labeling requirement may be inadequate, by itself, to satisfy the needs of the populace in question. The final option, a limited initialization solution, could exacerbate the scarcity of phone numbering resources and could deter carriers from participating in donor programs. However, the public safety benefits offered by a limited initialization solution appear to outweigh the possible negative repercussions. Thus, the Commission solicits comment on a requirement that carrier-donors initialize service on a limited basis by assigning donated handsets a call back number for the limited purpose of permitting call back by PSAPs. The Commission seeks comment on the effects of such a requirement on small businesses, and on the extent of the burden of updating software to accommodate PSAP call back capability on donated handsets.

27. Paragraphs 13 through 17 of the FNPRM consider alternative solutions to the call back problems of 911-only phones, which limit out-going calls to 911 and presently are incapable of receiving any incoming calls. Again, the option of taking no action is unacceptable. Alternatively, the Commission could require all manufacturers of 911-only phones to encode a standardized non-service initialized ''telephone number'' that would provide notice to PSAPs that the handset used for a E911 call lacks call back capability. On the positive side, this alternative would put the PSAP on notice that location information must be obtained quickly from the E911 caller as call back is impossible. On the other hand, this alternative would apply only prospectively and would not cover previously marketed handsets. It could also raise the price of 911-only handsets, providing only limited service to those who can afford them. A third alternative would require that manufacturers of 911-only phones label the handsets and educate consumers regarding the absence of call back capability. The Commission is concerned that, while a labeling and education requirement would be easier and less expensive to implement than a limited initialization requirement, the requirement would not cover handsets previously marketed by manufacturers and would be insufficient to reduce the threat to public safety that a lack of vital information concerning the caller's location or specific emergency needs represents.

28. The Commission is considering a requirement that these phones be modified to allow a return call by the PSAP. The requirement would apply only prospectively and would not cover previously marketed handsets. The disadvantages of this approach include the possibility that the additional costs of implementing such a solution could be a disincentive to the manufacturers of 911-only handsets, thus eventually removing them from the marketplace or driving the cost up. Additionally, the assignment of unique handset numbers to such phones could exacerbate the numbering shortage.

29. Finally, the Commission, as discussed in paragraphs 18 and 19 of the FNPRM, has identified a third category of noninitialized phones, *i.e.* noninitialized phones for which the service subscription has usually lapsed, which have been given to friends or family members. At least one comment advocates permitting a user's noninitialized handsets to be reprogrammed to the same ESN as the user's service-initialized handset. The Commission concludes that this option would not solve the call back problem for this category of users, and could, in fact, create new opportunities for delay and confusion for the PSAP trying to locate the caller. In such cases, the PSAP attempting to call back could easily reach a phone other than the one from which the E911 call was made, because several phones would have not only the same call back number but the same ESN, and the network would be unable to distinguish between them. It appears that the Commission has no means available to it to bar the use of such phones or to mandate public education with respect to their limitations and that carrier publicity concerning the disadvantages of relying on noninitialized phones, including those received from friends or family, would be most efficacious in alleviating the call-back problem with respect to these phones.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

30. None.

Paperwork Reduction Act

31. The FNPRM proposes a new paperwork collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 13, 2001. OMB comments are due October 11, 2001. Comments should address (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Transition to 911 Emergency Service: Notice of Proposed Rulemaking.

Form No.: None.

Type of Review: New information collection.

Respondents: Business or other for profit and non-profit.

Number of Respondents: 807.

Estimated Time Per Response: 30 minutes.

Total Annual Cost Burden: 0.

Total Annual Burden: 403½ hours.

Needs and Uses: The proposed labeling requirements would serve to educate consumers as to the capabilities and limitations of their handsets thus avoiding confusion resulting in delay in responding to E911 calls.

Ordering Clauses

32. Pursuant to sections 1, 4(i), 4(j), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), and 310, this Further Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–14926 Filed 6–12–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–9816]

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

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

ACTION: Denial of petition for reconsideration.

SUMMARY: The Federal motor vehicle safety standard on child restraint anchorage systems requires vehicle manufacturers to install child restraint anchorage systems in passenger motor vehicles. The standard specifies ''marking and conspicuity'' requirements for the lower bars of a child restraint anchorage system to help users locate and use the bars and to inform or remind them that the anchorage system is present. The standard was amended to permit manufacturers to meet these requirements, for a limited period, by installing at least one anchorage bar so that it is visible, or by installing a guidance fixture or one seat marking feature that is visible to a person installing a child restraint test fixture. Volkswagen AG and Volkswagen of America, Inc. (Volkswagen) petitioned for reconsideration of the rule. Volkswagen had been providing guidance fixtures on an ''as requested'' basis, rather than providing them with each new vehicle. The petitioner requested NHTSA to defer the effective date of the requirement for a guidance fixture until the manufacturer could obtain a supply of guidance fixtures from its supplier. For the reasons provided in this document, we have denied the petition.

FOR FURTHER INFORMATION CONTACT: *For nonlegal issues:* Mike Huntley, Office of Crashworthiness Standards, Special Vehicle and Systems Division (telephone 202–366–0029).

For legal issues: Deirdre Fujita, Office of the Chief Counsel (202–366–2992).

Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA's March 1999 Final Rule

On March 5, 1999, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard No. 225, ''Child Restraint Anchorage Systems'' (49 CFR 571.225), to require motor vehicle manufacturers to install child restraint anchorage systems that are standardized and independent of the vehicle seat belts (64 FR 10786) (Docket No. 98–3390, notice 2). Each new system has two lower anchorages and one tether anchorage. Each lower anchorage is a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a fixture to which the tether of a child restraint system can be hooked.

The final rule required vehicle manufacturers to begin phasing-in the tether anchorage of the child restraint anchorage system in the production year beginning September 1, 1999, with full implementation beginning September 1, 2000. Manufacturers were required to begin phasing-in the lower anchorages in the production year beginning on September 1, 2000, with full implementation beginning September 1, 2002.

The final rule was based on technical specifications set forth in November 1996 and June 1998 drafts of a child restraint anchorage system standard being developed by a working group of the International Organization for Standardization (ISO). The technical specifications covered matters such as the design and configuration of the anchorage system, and the strength of each component of the system. While many concepts and requirements of the draft ISO standard were incorporated into the final rule on Standard No. 225, the final rule highlighted differences between the rule and the draft ISO standard with regard to the strength required of the anchorages, and well as to the marking of the anchorages and other requirements.

NHTSA's August 1999 Response to Petitions for Reconsideration

There were a number of petitions for reconsideration suggesting revisions to the March 1999 final rule. Most of the petitioners were vehicle manufacturers concerned about their ability to meet the strength requirements of the final rule, particularly within the given leadtime. The vehicle manufacturers stated that they had been designing child restraint anchorage systems to meet the strength requirements that were under consideration by the ISO for the lower anchorages and by Transport Canada for the tether anchorage, and were prepared to meet those requirements by the compliance date of the rule, but not the strength requirements that the rule had specified. In response to this concern, NHTSA published a final rule that permitted vehicle manufacturers to meet alternative requirements during an initial several-year period (64 FR 47566, August 31, 1999) (Docket No. 99–6160). We specified in that document that, from September 1, 2000 until August 31, 2002,[1] manufacturers installing the lower anchorage bars would have the option of meeting the requirements set forth in the March 1999 final rule, or requirements that were very similar, but not identical, to the June 1998 draft ISO standard.

The March 1999 final rule had required a permanent mark on the vehicle seat back at the location of each lower bar location to help knowledgeable motorists locate and use the bars, and to inform or remind other motorists that the bars are present (S9.5). The mark would not be required, the rule had specified, if the lower bars were visible (S9.5(b)). In a April 16, 1999 petition for reconsideration of the rule, Volkswagen stated that a ''guide device installed onto the anchorage at the seat bight'' should be considered ''as a marking device or an anchorage locator.'' [2] In the August 31, 1999

[1] The date was later extended to September 1, 2004. 65 FR 46628.

[2] Volkswagen also stated in its petition that it supported the petition for reconsideration of the final rule submitted by the Alliance of Automobile

Continued

response to the petitions for reconsideration, the agency adopted alternative visibility requirements for the lower bars. They required that ''at least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing the [child restraint fixture] * * *'' (S15.4).

The Alliance's October 1999 Petition for Reconsideration

NHTSA received a number of petitions for reconsideration of various provisions of the August 1999 final rule. The Alliance submitted an October 15, 1999 petition requesting reconsideration of a number of provisions, including the marking alternative in S15.4. The Alliance asked NHTSA to add a parenthetical phrase, ''(when installed),'' after ''guidance fixture.'' The petitioner said that the parenthetical should be added to S15.4 because ''the intent of the S15 is to incorporate the provisions of the ISO Draft.'' The Alliance did not specify which version (i.e., what date) of the draft ISO standard it was referring to.

NHTSA's July 2000 Response to Petitions for Reconsideration

In a July 31, 2000 response to petitions for reconsideration (65 FR 46628; July 31, 2000) (Docket No. NHTSA–7648), NHTSA declined to add the parenthetical ''(when installed)'' sought by the Alliance. We reasoned that adding the parenthetical would suggest, contrary to our intent, that manufacturers could satisfy marking requirements if they provided the guidance fixtures with a new motor vehicle without actually installing them in the motor vehicle. The agency's intent was that the guidance fixtures be installed prior to delivery to consumers to ensure that the consumer could see the anchorage system, its location, and its appearance when the fixtures are properly installed. We concluded that requiring manufacturers to install the guidance fixtures would result in the vehicle owner either leaving them attached and thus ready to use or taking some affirmative action to determine how to remove them and then actually removing them. We believed that, in either event, the owners would be more likely to notice and remember the fixtures than if the fixtures were simply provided with the vehicle, but not actually installed in it.

In addition, we explained in the July 2000 final rule that NHTSA had permitted manufacturers the option of meeting draft ISO requirements to facilitate and thus accelerate the installation of child restraint anchorage systems in vehicles. We stated that manufacturers could meet the draft ISO requirements for strength and location of anchorages more expeditiously than they could meet the March 1999 final rule's requirements for strength and location. However, we concluded that guidance fixtures could be easily snapped on to the lower bars when the vehicles were offered for sale. Having to install them would not delay or impede introduction of child restraint anchorage systems in vehicles. We noted further that, in the June 1998 draft version of the ISO standard that we used in developing the March 1999 final rule, the parenthetical was not present. For all these reasons, we denied the request to add the parenthetical. Instead, to clarify S15.4, we added a sentence stating that ''If guidance fixtures are used to meet this [marking] requirement, the fixture(s) (although removable) must be installed.''

Volkswagen August 2000 Petition for Reconsideration

On August 17, 2000, Volkswagen filed a petition for reconsideration concerning S15.4. Volkswagen indicated that it was surprised that NHTSA denied the Alliance's request to add the parenthetical. Volkswagen stated that it had been providing lower anchorages in some of its models beginning with the 1999 model year, but had not been providing the guidance fixtures. Volkswagen stated in its petition:

> Those anchorages are not visible and no seat marking feature is provided but a guidance fixture has been developed and is available for user installation consistent with the 1999 ISO draft. Immediately upon becoming aware of NHTSA's July 31, 2000 Notice, Volkswagen requested its supplier of guidance fixtures to furnish sufficient quantities for installation in production on a best effort basis but in no event later than August 30, 2000. Based upon information furnished by the supplier, Volkswagen is not certain that it can comply with S15.4 by the end of August * * *. Volkswagen therefore petitions that the effective date of S15.4 be deferred for an additional 30 days at which time Volkswagen will be certain that all vehicles can be delivered to consumers in strict compliance with the new regulations. Volkswagen will also conduct a mailing campaign to the owners of all Jetta, Golf, Cabrio and New Beetle vehicles manufactured since September 1, 1999 or later * * *.

To justify the deferral, Volkswagen stated:

> Because guidance fixtures serve to identify existing anchorages in the vehicle only and are not essential to the safe use of the vehicle, and because child restraint systems using rigid attachments which are suitable for use with the guidance fixtures are not available in the market at this time, Volkswagen believes there is no detriment to motor vehicle safety which would be caused by the deferral of the effective date.

II. Agency Decision

NHTSA is denying the petition for the reasons set forth below.[3]

As discussed above, installation of guidance fixtures is not the sole means by which a manufacturer may comply with the marking and conspicuity requirements specified in the standard. While Volkswagen's request for an extension of time to provide the guidance fixtures was based on its uncertainty regarding the ability of a supplier of these fixtures to provide sufficient quantities of the fixtures in a time period that would enable Volkswagen to meet the requirements of the standard, we note that Volkswagen could have alternatively taken steps to mark the location of the lower anchorages on the vehicle seat in accordance with S9.5(a).

The August 1999 response to petitions for reconsideration permitted manufacturers to use a guidance fixture to meet the marking and conspicuity requirements for a limited time. In interpreting the August 1999 rule, Volkswagen apparently concluded that a manufacturer relying on guidance features to comply with those requirements need not provide the guidance fixtures with each vehicle. Volkswagen apparently concluded that it was possible to comply with the requirements by offering the guidance fixtures to new vehicle purchasers on an ''as requested'' basis.

We believe Volkswagen's interpretation of S15.4 was unreasonable. The language of S15.4, ''Marking and conspicuity of the lower anchorages,'' has stated since its adoption that ''at least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature'' shall be readily visible. For each vehicle to meet the requirement that the bar, guidance fixture or seat marking feature be visible by means of guidance fixtures, the fixtures had to be provided with each vehicle. The agency notes that Volkswagen was the only

Manufacturers (the Alliance). The Alliance's April 17, 1999 petition for reconsideration asked NHTSA to amend S9.5 to require marking of one, not two, of the anchorage bars, and did not specifically request that guidance fixtures be allowed to satisfy marking requirements. The Alliance later submitted an October 15, 1999 petition for reconsideration that included the request to allow guidance fixtures as an option.

[3] NHTSA informed Volkswagen by telephone on August 30, 2000, that the petition would be denied (see memorandum in docket 2000–7648–3 describing the conversation).

manufacturer that indicated that it believed that the guidance fixtures could be provided on an ''as requested'' basis.

It was also unreasonable of Volkswagen to conclude that the guidance fixtures need not be provided, given the reasons why the agency had required them. The preamble to the final rule establishing Standard No. 225 made clear that NHTSA considered the standard's marking and conspicuity requirements to be crucial elements contributing to the correct use of child restraint anchorage systems. Marking the lower anchorage bars and making them conspicuous helps knowledgeable motorists locate and use the bars and informs or reminds other motorists that the anchorage system is present.

> Consumers may not otherwise learn of the existence of a child restraint anchorage system in a particular vehicle or at a particular seating position in a vehicle without some type of visual reminder that the anchorage system is present. Even when they know the bars are present, they may not know precisely where in the seat bight to look for the bars.

64 FR at 10802. It was unreasonable for Volkswagen to conclude that NHTSA would identify a need to make the anchorages conspicuous and would identify specific alternatives manufacturers may take to meet the need (mark the seat back, provide a guidance fixture, or place an anchorage where it is visible), then allow manufacturers the option of selling vehicles that do not meet any of the alternatives.

Volkswagen believes there is no detriment to motor vehicle safety which would be caused by the deferral of the effective date because guidance fixtures serve to identify existing anchorages in the vehicle only and are not essential to the safe use of the vehicle, and because child restraint systems using rigid attachments which are suitable for use with the guidance fixtures are not available in the market at this time. To the contrary, we believe that anchorage bars that are not visible, marked with a circle or made conspicuous by a guidance fixture are not so likely to be noticed by consumers. This lower visibility would likely result in reduced overall use of the child restraint anchorage system. Installed guidance fixtures also clearly show the anchorage bars of a child restraint anchorage system to users, which can reduce the likelihood that users may mistakenly latch their child restraints on to an incorrect or unsuitable part of the vehicle structure. Because guidance fixtures increase the visibility and therefore likelihood of correct use of the anchorage bars, they are a benefit to all child restraint users, not just to owners of child restraints with rigid attachments. Further, since child restraint systems using rigid attachments which are suitable for use with the guidance fixtures will be available in the market in the future, we believe that during the life span of a vehicle equipped with an anchorage system, there is a high likelihood that the vehicle will be owned by someone having a child restraint with rigid attachments. As discussed, the guidance fixtures would facilitate use of the child restraint anchorage system throughout the life of the vehicle.

For these reasons, NHTSA is denying Volkswagen's petition for reconsideration. The marking and conspicuity requirements of S15.4 apply to any child restraint anchorage system installed on a vehicle on or after September 1, 1999, including those voluntarily installed.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on May 31, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–14880 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 66, No. 114

Wednesday, June 13, 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

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and should be made subject to the provisions of the Packers and Stockyards Act (Act), 1921, as amended (7 U.S.C. 181 *et seq.*).

AL–192 Southern Star Stockyard, Elgin, Alabama

AR–176 Bar D Arena, Ash Flat, Arkansas

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 1521, South Building, U.S. Department of Agriculture, Washington, DC 20250–3646, by June 28, 2001.

All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, DC this 7th day of June 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–14868 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Scott's Pond Watershed Protection Project Jerome County, Idaho

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho 83709–1574, telephone (208) 378–5700.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Scott's Pond Watershed Protection Project, Jerome County, Idaho.

The Plan/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national adverse impacts on the environment. As a result of these findings, Richard Sims, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Scott's Pond Watershed Protection Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment and associated nutrients and bacteria, improve the quality of ground water, and the waters entering the Snake River. Planned treatment practices include: buffer strips, composting facility, conservation crop rotation, cover and green manure crop, critical area planting, dike (berm), fence, forage harvest management, irrigation pit or regulating reservoir, irrigation system (sprinkler), irrigation system (surface—gated pipe with surge), irrigation water management, watering facility (livestock), nutrient management, pasture and hayland planting, pest management, prescribed grazing, pumping plant for water control, residue management (direct seeding and no-till), waste management system, waste storage pond and liner, waste utilization, well decommissioning (injection well), wildlife upland habitat management, wildlife wetland habitat management, and windbreak/shelterbelt establishment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the plan/environmental assessment are on file and may be reviewed by contacting Mr. Richard Sims. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

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

(This activity is listed in the catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: May 4, 2001.

Richard Sims,

State Conservationist.

[FR Doc. 01–14835 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Hubbard and Murphree Creeks Watershed, Tallahatchie County, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives

notice that an environmental impact statement is not being prepared for Hubbard and Murphree Creeks Watershed, Tallahatchie County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

Hubbard and Murphree Creeks Watershed, Tallahatchie County, Mississippi Notice of a Finding of No Significant Impact

The project concerns a watershed plan to provide supplemental flood protection and reduce threat to loss of life from sudden dam failure to the residents of the Hubbard and Murphree Creeks Watershed and others. The planned works of improvement consists of rehabilitating three floodwater retarding structures (FWRS) Y–17–72, Y–17–73, and Y–17–74.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 29, 2001.

Homer L. Wilkes,

State Conservationist.

''(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)''

[FR Doc. 01–14920 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Field Office Technical Guide, Changes; South Dakota

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of Availability of proposed changes to conservation practice standards in Section IV of the Field Office Technical Guide (FOTG) of NRCS in South Dakota for review and comment.

SUMMARY: It is the intention of NRCS in South Dakota to issue revised conservation practice standards in Section IV of the FOTG for the following practice Constructed Wetland (656).

DATES: Comments on this notice must be received within 30 days from the publication date in the **Federal Register**.

ADDRESSES: All comments concerning the proposed conservation practice standard changes should be addressed to: Ronald Nadwornick, State Resource Conservationist, NRCS, 200 Fourth Street SW, Huron, South Dakota 57350. Copies of these standards will be made available upon written request.

Dated: April 24, 2001.

Ronald Nadwornick,

State Resource Conservationist, Natural Resources Conservation Service, Huron, South Dakota 57350.

[FR Doc. 01–14836 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section 4 of the Field Office Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Field Office Technical Guide. NRCS is also seeking review and comments to the proposed changes.

SUMMARY: It has been determined by the NRCS State Conservationist for Washington State, that changes must be made in the Field Office Technical Guide specifically for the following practice standards:

- Nutrient Management, practice code number 590
- Waste Utilization, practice code number 633
- Interim standard; Grass Buffer Strips, practice code number 741

Proposed changes are to include new and improved technology.

DATES: Comments will be received for a period of 30 days following the publication date of this notice.

FOR FURTHER INFORMATION CONTACT: Leonard Jordan, State Conservationist, Natural Resources Conservation Service, 316 West Boone Avenue, Suite 450, Spokane, WA, 99201–2348; phone (509) 323–2900; or FAX (509) 323–2909.

SUPPLEMENTARY INFORMATION: If you would like to review any of the practice standards mentioned, contact Leonard Jordan at the above address or phone number to receive a copy of the draft standards.

For the next 30 days the NRCS will receive comments relative to the proposed changes.

Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: May 7, 2001.

Leonard Jordan,

State Conservationist, Washington.

[FR Doc. 01–14837 Filed 6–12–01; 8:45 am]

BILLING CODE 3410–16–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 19, 2001; 1 p.m.–4 p.m.

PLACE: Radio Free Asia, Suite 300, 2025 M Street, NW., Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or

the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: June 11, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01–15018 Filed 6–11–01; 1:33 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817, C–549–818, and C–791–810]

Notice of Postponement of Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand; and Notice of Postponement of Final Countervailing Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand and South Africa

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

ACTION: Notice of Postponement of Final Antidumping Duty Determination and Final Countervailing Duty Determinations.

EFFECTIVE DATE: June 13, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Nancy Decker (antidumping duty investigation) at (202) 482–3019 and (202) 482–0196, respectively, Office 8, and Dana Mermelstein (countervailing duty investigations) at (202) 482–1391, Office 7, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

Background

This antidumping duty investigation was initiated on December 4, 2000. See Initiation of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000). The period of investigation (POI) is October 1, 1999 through September 30, 2000. On May 3, 2001, the Department published the notice of preliminary determination. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 22199.

On March 23, 2001, petitioners submitted letters requesting alignment of the final determinations in the countervailing duty investigations involving Thailand and South Africa with the final determinations of the companion antidumping duty investigations of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand and Ukraine. In accordance with section 705(a)(1) of the Act, we aligned the final determinations in these countervailing duty investigations with the final determinations in the companion antidumping investigations of certain hot-rolled carbon steel flat products. See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 20251 (April 20, 2001), and Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From South Africa, 66 FR 20261 (April 20, 2001).

Postponement of Final Determinations and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On May 1, 2001, Sahaviriya Steel Industries (respondent) requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested an extension of the provisional measures. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondent requesting the postponement accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the publication of the preliminary determination in the **Federal Register**. Suspension of liquidation will be extended accordingly. Through this postponement of the final antidumping duty determination, we are also postponing the final countervailing duty determinations of certain hot-rolled carbon steel flat products from Thailand and South Africa which have been aligned with the companion antidumping duty investigations pursuant to section 705(a)(1) of the Act. This notice is published in accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2).

Dated: June 4, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–14916 Filed 6–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824, A–583–837]

Notice of Initiation of Antidumping Duty Investigations: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India and Taiwan

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

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: June 13, 2001.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Jeffrey Pedersen at (202) 482–6320 and (202) 482–4195, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petitions

On May 17, 2001, the Department of Commerce (the Department) received petitions filed in proper form by the following parties: DuPont Teijin Films, Mitsubishi Polyester Film, and Toray Plastics (America) Inc., (collectively, the petitioners). The Department received from the petitioners information supplementing the petitions throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of polyethylene terephthalate film, sheet and strip (PET film) from India and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9) (C) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the Determination of Industry Support for the Petitions section below).

Scope of Investigations

For purposes of these investigations, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27323 (May 19, 1997). The Department encourages all parties to submit such comments within 20 days from the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The scope comment period is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authorities. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is all PET film, including equivalent PET film. In a prior antidumping investigation, the ITC adopted this definition of the domestic like product. *See, Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea,* (ITC Pub. No. 2383) (May, 1991) (Final Determination). Because no party has commented on the petitions' definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate, the Department has adopted the domestic like product definition set forth in the petitions.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also ''other information'' it obtained through research and which is attached to the Initiation Checklist (*See* Import Administration Antidumping Investigation Initiation Checklist (Initiation Checklist), Attachment I, Re: Industry Support, June 6, 2001, on file in the Central Records Unit (CRU) of the main Department of Commerce building). Based on information from these sources the Department determined that producers supporting the petition with respect to each of the two countries represent over 50 percent

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Panel Displays and Display Glass from Japan: Final Determination; Recission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Constructed Export Price, Export Price and Normal Value

India

The petitioners determined export prices (''EP'') and constructed export prices (''CEP'') based on their own market research reports tracking the selling activities of two Indian producers active in the United States market, Garware Polyester Ltd. (''Garware'') and Polyplex Corporation (''Polyplex''). According to the petitioners, neither company sells directly to U.S. end users, but rather sell through the companies' respective U.S. sales agent/distributor. The petitioners state that Garware sells its products through its affiliated sales agent/distributor, Global PET Films (''Global''), while Polyplex sells through an unaffiliated sales agent/distributor. The petitioners based their U.S. price calculations on the prices of the U.S. distributors to U.S. end users. We do not believe it is appropriate, in this instance, to use the submitted U.S. prices for Polyplex because these prices are based on the prices of an unaffiliated U.S. distributor to a U.S. end user, and not on Polyplex's prices to that unaffiliated U.S. distributor. The petition also contains two other U.S. prices from India (*i.e.,* Garware's prices through its affiliated U.S. distributor, Global, one for 48 gauge and one for thick industrial film) on which we can calculate an estimated dumping margin. Therefore, we are basing the U.S. price on Garware's CEP prices through its affiliated distributor, Global.

To derive CEP for Garware, the petitioner deducted from the price quote an affiliated party selling markup, ocean freight, U.S. brokerage and handling, U.S. inland freight from port to warehouse, marine insurance, U.S. customs duties, U.S. warehousing, U.S. inland freight from warehouse to customer, slitting costs and material losses associated with slitting. We recalculated the affiliated party selling markup to more accurately reflect Global's indirect selling expenses incurred in the United States. The petitioners made no adjustment for CEP profit as Garware's fiscal year 1999 financial statement showed no profit.

With respect to normal value (NV), the petitioners provided home market prices that were based on their own market reports tracking the selling activities of Garware and Polyplex in the Indian market for 48 gauge film and thick industrial film. Since we are not using the submitted U.S. prices for Polyplex, we are not using any of the submitted home market prices for Polyplex. Furthermore, we did not use the submitted home market price for Garware for thick industrial film because the petitioners could not substantiate this price with documentation or other market reports that would support the veracity of this price. Thus, the Department determined that Garware's home market price for the 48 gauge film is the only price in the petition that is directly comparable to the products exported to the U.S. which serve as the basis for CEP.

The petitioners calculated an NV by making deductions from the quoted home market price for 48 gauge film for Garware's credit expenses, packing costs, slitting costs, material loss, and advertising expenses. We adjusted the petitioners' NV calculations by adding the petitioners' reported U.S. packing costs to NV. For NV compared to CEP, the petitioners deducted a CEP offset.

Although the petitioners provided a margin based on a price-to-price comparison, they also made a country-wide cost allegation and provided information demonstrating reasonable grounds to believe or suspect that sales of PET film in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b)(3) of the Act. As a result, they requested that the Department initiate sales-below-cost investigations on a country-wide basis.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacture (COM), selling, general, and administrative (SG&A) expenses, and packing costs. The petitioners calculated COM based on the average consumption rates of a U.S. PET film producer. The petitioner adjusted COM for known differences in costs between the United States and India. To calculate SG&A and interest expense, the petitioner relied upon Garware's 1999 financial statements.[2] Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. *See* the Initiation of Cost Investigations section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in India on constructed value (CV). The petitioners calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute Indian home market costs.[3] The petitioners did not include profit in calculating CV. As this approach is conservative, the Department accepted such methodology.

Based on a comparison of CEP to NV, we calculated a margin of 77.52 percent. Based on comparisons of CEP to CV, we calculated margins of 128.33 percent and 142.21 percent.[4]

Taiwan

The petitioners determined EP based on their own market research tracking the activity of the largest Taiwanese exporter of PET film to the United States, Nan Ya Plastics Industry Co., Ltd. (Nan Ya).

The petitioners submitted Nan Ya's prices for 48 gauge film and DFR base (industrial) film. For DFR base film, the petitioners submitted a price from a direct sale from Nan Ya to an unrelated U.S. purchaser. For this sale, the petitioners calculated a net U.S. price by deducting ocean freight, U.S. brokerage and handling, U.S. inland freight from port to warehouse, marine insurance, U.S. customs duties, U.S. warehousing, U.S. inland freight from warehouse to customer, slitting costs and material losses associated with slitting.

For 48 gauge film, the petitioners' cited price was a price from an unaffiliated U.S. distributor to a U.S. end user. We do not believe it is appropriate, in this instance, to use the submitted 48 gauge film U.S. price for Nan Ya because this is the price from an unaffiliated U.S. distributor to a U.S. end user, and not Nan Ya's price to that unaffiliated U.S. distributor. However, the petition also contains one other U.S. price from Taiwan on which we can calculate an estimated dumping margin, *i.e.,* the EP price on a direct sale from Nan Ya to an unrelated U.S. customer the DFR base film price discussed above. Therefore, we based U.S. price on this EP sale information.

[2] The petitioners also calculated a producer-specific COP for Polyplex in the same manner, but since we did not use the submitted prices for Polyplex, we also did not use the submitted costs for Polyplex in our calculations.

[2] The

[3] The petitioners also calculated a producer-specific CV for Polyplex in the same manner, but since we did not see the submitted prices for Polyplex, we also did not use the submitted costs

With respect to NV, the petitioners provided home market prices that were obtained from an independent marketing consultant for 48 gauge and DFR base film. The petitioner also made a country-wide cost allegation and provided information to support its claim that sales of PET film in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b)(3) of the Act. As a result, they requested that the Department initiate a sales-below-cost investigation on a country-wide basis. However, since the submitted home market prices were from outside of the anticipated POI and we are able to calculate a margin based on constructed value, we did not use these prices in our analysis and therefore have not conducted an analysis for sales below cost.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV on constructed value (CV), consisting of COM, depreciation, SG&A expenses, interest expense, profit and packing. The petitioner calculated COM based on the average consumption rates of a U.S. PET film producer. The petitioner adjusted COM for known differences in costs between the United States and Taiwan. To calculate SG&A, interest expense, and profit, the petitioner relied upon the 1999 financial statements of Nan Ya. We recalculated profit to more accurately reflect the profits attributable to plastic products (which predominantly consist of PET film products).

Based on a comparison of EP to CV, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for PET film from Taiwan is 15.65 percent.

Initiation of Cost Investigations

India

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in India were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigation for India. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. *See* SAA, H. Doc. 103–316, Vol. 1, at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation. ''Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in India were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation with respect to India.

Taiwan

As also noted above, the petitioners alleged that sales in Taiwan were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigation for Taiwan. However, since we could not determine whether sales in Taiwan were made at prices below COP, we are not initiating a sales-below-COP investigation at this time in the Taiwan investigation.

Critical Circumstances

Section 733(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under paragraph (A) ''there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or . . . the person by whom, or for whose account, the merchandise was imported know or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period of time.'' Section 351.206(h) of our regulations defines ''massive imports'' as imports that have increased by at least by 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that ''relatively short period'' will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

At this time, the petitioners have not supported their allegation under section 733(e)(1) of the Act and section 351.206 of the Department's regulations. Although the petitioners provided data indicating significant increases in imports over a three-year period, we do not consider this to be sufficient evidence of massive imports over a relatively short period of time within the meaning of section 733(e)(1)(B) of the Act and section 351.206 of the Department's regulations. If, at a later date, the petitioners adequately allege the elements of critical circumstances, based on reasonably available information, the Department will investigate this matter further.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PET film from India and Taiwan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in declining trends in U.S. selling prices, sales, revenue and market share.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II to the Initiation Checklist-Analysis of Allegations and Evidence of Material Injury and Causation.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on PET film, and the petitioners' responses to our supplemental questionnaire clarifying the petitions, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PET film from India and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline

is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of India and Taiwan. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than July 2, 2001, whether there is a reasonable indication that imports of PET film from India and Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–14915 Filed 6–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Notice of Initiation of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India

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

ACTION: Initiation of Countervailing Duty Investigation.

EFFECTIVE DATE: June 13, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–5346 or (202) 482–5193, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petition

On May 17, 2001, the Department received a petition filed in proper form by the following parties: DuPont Teijin Films, Mitsubishi Polyester Film, and Toray Plastics (America) Inc. (collectively, the petitioners). The Department received from the petitioners information supplementing the petition throughout the 20-day initiation period.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of polyethylene terephthalate film, sheet and strip (PET film) in India receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see* the Determination of Industry Support for the Petition section below).

Scope of Investigation

For purposes of this investigation, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalisized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27323 (May 19, 1997). The Department encourages all parties to submit such comments within 20 days from the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The scope comment period is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of India (GOI) for consultations with respect to the petition. The GOI did not accept our invitation to hold consultations before the initiation.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authorities. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Panel Displays and Display*

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is all PET film, including equivalent PET film. In a prior antidumping investigation, the ITC adopted this definition of the domestic like product. *See Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea,* (ITC Pub. No. 2383) (May, 1991) (Final Determination). Because no party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate, the Department has adopted the domestic like product definition set forth in the petition.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In order to estimate production for the domestic industry as defined for purposes of this case, the Department has relied upon not only the petition and amendments thereto, but also ''other information'' it obtained through research and which is attached to the Initiation Checklist (*See* Import Administration Countervailing Duty Investigation Initiation Checklist (Initiation Checklist), Attachment I, Re: Industry Support, June 6, 2001, on file in the Central Records Unit (CRU) of the main Department of Commerce building). Based on information from these sources the Department determined that producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of subsidized and, as noted below, dumped imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in declining trends in U.S. selling prices, sales, revenue and market share.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II to the Initiation Checklist-Analysis of Allegations and Evidence of Material Injury and Causation.

Period of Investigation (POI)

The petitioners contend that the POI is April 1, 2000 through March 31, 2001, which is the last completed fiscal year for each of the alleged producers/exporters of the subject merchandise. If these companies do not have the same fiscal year then the POI would be calendar year 2000.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India (a full description of each program is provided in the *Initiation Checklist):*

A. GOI Programs:
1. The Duty Entitlement Passbook Scheme (DEPBS)—Pre-and Post-Export Credits
2. Advanced License Scheme
3. Special Import Licenses (SILs)
4. Export Promotion Capital Goods Scheme (EPCGS)
5. Pre-and Post-shipment Export Financing
6. Exemption of Export Credit from Interest Taxes
7. Income Tax Exemption Scheme (ITES) (Sections 10A, 10B and 80 HHC)
8. Loan Guarantees from the GOI
9. Benefits for Export Processing Zones/Export Oriented Units

B. State of Maharashtra Programs:
1. Octroi Refund Scheme
2. Sales Tax Incentive Scheme
3. Capital Incentive Scheme
4. Electricity Duty Exemption Scheme

C. State of Utter Pradesh Programs:
1. Sales Tax Incentive Scheme
2. Capital Incentive Scheme

We are not initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to manufacturers, producers and exporters of the subject merchandise in India:

1. State of Utter Pradesh (SUP) Transport Subsidy Scheme

The petitioners claim that the SUP provides a state transport subsidy at the rate of 25 percent of the cost of transport. However, the petition does not provide any information on whether this program is specific under section 771(5A) of the Act.

2. State of Gujarat (SOG) Infrastructure Assistance Schemes

The petitioners, citing to a document entitled ''Gujarat Industrial Policy—2000,'' allege that the SOG provides three types of infrastructure assistance: (1) Assistance for creating infrastructure facilities and research to specific industries, including ''plastic processing industries;'' (2) assistance for

Glass from Japan: Final Determination; Recession of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).

infrastructure for medium and large industrial projects in rural areas; and (3) additional incentives ''at the rate of 25 percent under all of the schemes'' for industrial units ''coming up'' in identified ''backward talukas.'' The petitioners also state that the document on Gujarat Industrial Policy provides ''direct evidence'' of the planned existence of these programs during the POI. However, the information provided by the petitioners regarding the Infrastructure Assistance Scheme only provides information on the intentions of the SOG to provide assistance under this scheme in 2000. For example, the document entitled ''Gujarat Industrial Policy—2000'' uses such phrases as a ''a scheme will be introduced,'' ''assistance will be provided,'' and ''intends to introduce.'' The petition thus provides no information that the Infrastructure Assistance Scheme in fact existed during the POI. Since the petitioners have not provided information on whether this scheme in fact existed during the POI, they have therefore not provided sufficient information supporting their allegations that this program provides a financial contribution under section 771(5)(D) of the Act, that this program provides a benefit under section 771(5)(E) of the Act, or that this program is specific under section 771(5A) of the Act.

3. State of Madhya Pradesh (SMP) Sales Tax Incentive Scheme

The petitioners based their allegations concerning this program on a SMP state profile. The SMP state profile includes one sentence on this program under ''Industrial Incentive Schemes,'' stating ''sales tax exemption/deferment for 4 to 9 years.'' This information does not support the petitioners' allegation that this program is specific under section 771(5A) of the Act.

4. SMP Capital Incentive Scheme

The petitioners based their allegations concerning this program on a SMP state profile. The SMP state profile includes one sentence on this program under ''Industrial Incentive Schemes,'' stating ''capital investment subsidy at the rate of 5 percent to 15 percent.'' This information does not support the petitioners' allegation that this program is specific under section 771(5A) of the Act.

Critical Circumstances

The petitioners request that the Department initiate a critical circumstances investigation of Indian PET film because the petitioners believe that these imports are likely to ''undermine seriously the remedial effect of any * * * countervailing duty order.''

Section 703(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that (A) the alleged countervailable subsidies are inconsistent with the Subsidies Agreement and (B) there have been massive imports of the subject merchandise over a relatively short period of time. Section 351.206(h) of our regulations defines ''massive imports'' as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that ''relatively short period'' will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

At this time, the petitioners have not supported their allegation under section 703(e)(1) of the Act and section 351.206 of the Department's regulations. Although the petitioners provided data indicating significant increases in imports over a three-year period, we do not consider this to be sufficient evidence of massive imports over a relatively short period of time within the meaning of section 703(e)(1)(B) of the Act and section 351.206 of the Department's regulations. If, at a later date, the petitioners adequately allege the elements of critical circumstances, based on reasonably available information, the Department will investigate this matter further.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on PET film from India, and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of PET film from India receive countervailable subsidies.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the representatives of the GOI. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation.

Preliminary Determination by the ITC

The ITC will determine, no later than July 2, 2001, whether there is a reasonable indication that imports of PET film from India are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: June 6, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–14914 Filed 6–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001 *et seq.*) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the

Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 01–00002.'' A summary of the application follows.

Summary of the Application

Applicant: Sun Valley Rice Co., L.L.C. (''Sun Valley''), 7050 Eddy Road, Arbuckle, California 95912.

Contact: Michael V. LaGrande, President.

Telephone: (530) 476–3000.

Application No.: 01–00002.

Date Deemed Submitted: May 29, 2001.

Members (in addition to applicant): Buckrock, LLC, Williams, CA; Klamath Enterprises, LLC, Williams, CA; Thomas Rice Company, LLC, Bakersfield, CA; and Coldwater Farms, LLC, Bakersfield, CA.

Export Trade

1. Products

California rice and rice products (rough rice, brown rice, milled rice, undermilled or unpolished rice, coated rice, oiled rice, rice bran, rice polish, head rice, broken rice, second head rice, brewers rice, screenings, rice flour, and rice hulls).

2. Services

All services related to the export of Products.

3. Technology Rights

All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and sui generis forms of protection for databases and computer programs.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Consulting and trade strategy; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; documentation and services related to compliance with customs requirements; joint ventures; inspection and quality control; transportation; shipping and export management; export licensing; insurance and financing; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; management information systems development and application; trade show exhibitions; professional services in the area of government relations and assistance with state and federal export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with sales of Products for export, Sun Valley, on a transaction-by-transaction basis, may:

(a) Exchange information with suppliers or other entities individually regarding availability of and prices for Products for export, and inventories and near-term production and delivery schedules for purposes of determining the availability of Products for purchase and export and coordinating export of Products with its distributors and customers in the Export Markets;

(b) Confer with suppliers about the possibility of offers to and purchases by Sun Valley for a specific export sales opportunity;

(c) Solicit suppliers to offer/sell Products through the certified activities of Sun Valley;

(d) Solicit orders from potential foreign distributors and purchasers for sale of Products in Export Markets;

(e) Prepare and submit offers of Products to potential foreign distributors, purchasers or other entities for sale in Export Markets;

(f) Establish the price and quantity of Products for sale in Export Markets and set other terms for any other sale;

(g) Negotiate and enter into agreements for sale of Products in Export Markets;

(h) Enter into agreements to purchase Products from one or more suppliers to fulfill specific sale obligations, which may be agreements whereby suppliers agree to deal exclusively with Sun Valley for sale of the Products in a particular Export Market or Markets and/or whereby Sun Valley agrees to purchase exclusively any particular supplier's (or suppliers') Products for resale in the Export Market;

(i) Assign sales of Products to, and/or divide export orders among, suppliers or other persons based on orders, Export Market, territories, customers, or on any other basis Sun Valley deems fit;

(j) Broker and take title to the Product;

(k) Enter into agreements with one or more Export Trade Intermediaries or export trade purchasers for the purchase of Products, which may be agreements whereby Sun Valley agrees to deal exclusively with an entity or customer in a particular Export Market, and/or by which that customer or intermediary agrees to deal exclusively with Sun Valley and/or agrees not to purchase from Sun Valley's competitors in any Export Market, unless so authorized;

(l) Apply for and utilize applicable export assistance and incentive programs which are available within government and private sectors;

(m) Provide Export Trade Facilitation Services including, but not limited to, arranging and coordinating delivery of Product to port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arrange for warehousing, stevedoring, wharfage, handling, inspection, fumigation, quality control, freight forwarding, insurance, and documentation; invoicing foreign buyer; collecting payment for product; and arranging for

payment of applicable commissions and fees;

(n) Refuse to purchase Product or provide information regarding export sales of Product to any supplier(s) or other entities for any reason Sun Valley deems fit;

(o) Refuse to sell Product, to quote prices for Product, to provide information regarding Product, or to market or sell Product to any customers or distributors in the Export Markets, or in any countries or geographical areas in the Export Markets; and

(p) Meet with suppliers or other entities periodically to discuss general matters specific to exporting (not related to price and supply arrangements between Sun Valley and the individual suppliers) such as relevant facts concerning the Export Markets (*e.g.*, demand conditions, transportation costs and prices in the Export Markets), or the possibility of joint marketing, bidding or selling arrangements in the Export Markets.

Definition

Export Intermediary means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

Dated: June 8, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–14881 Filed 6–12–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060501C]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Comprehensive Management Committee, Surfclam and Ocean Quahog Committee, Executive Committee, Law Enforcement Committee, and Squid, Mackerel, and Butterfish Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, June 26, 2001 through Thursday, June 28, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, VA, telephone: 757–727–9700.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, June 26, 2001, the Comprehensive Management Committee will meet from 10 a.m. until noon; and the Surfclam and Ocean Quahog Committee will meet from 1 p.m. to 4 p.m. On Wednesday, June 27, the Executive Committee will meet from 8 a.m. to 9 a.m; the Law Enforcement Committee will meet from 8 a.m. to 9 a.m; the Squid, Mackerel, Butterfish Committee will meet from 9 a.m. until noon; and the Council will meet from 1 p.m. to 5 p.m. On Thursday, June 28, Council will meet from 8 a.m. until 1 p.m.

Agenda items for the committees and Council meeting(s), as appropriate, are: Finalize the Comprehensive Management Committee's action plan to address Council priorities; review staff recommendations for 2002 quotas and management measures, and develop 2002 quota specification recommendations for surfclam and ocean quahogs; develop comments regarding proposed rule updating regulations affecting Council operations; continue development of Mid-Atlantic Council enforcement guidelines; review Monitoring Committee's recommendations on squid, mackerel, and butterfish for 2002 quotas and management measures and address possible in-season adjustment for 2001; recognize U.S. Coast Guard Cutter Staten Island with Council's Fishery Achievement Award; and develop recommendations for 2002 quota specifications for both squid, mackerel, butterfish and surfclam and ocean quahogs; hear organizational and committee reports including the New England Council's report where the Council may address possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting. The Council may also address possible actions from the South Atlantic Council on rock shrimp and dolphin/wahoo.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these 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 actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the meeting date. Dated:

Dated: June 8, 2001.

Richard W. Surdi,

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

[FR Doc. 01–14922 Filed 6–12–01; 8:45 am]

BILLING CODE 3510–22–S

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 August 13, 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: June 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Learning Anytime Anywhere Partnerships (LAAP) Guidelines for Annual Performance Reports with Auxiliary Collection Instruments.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 40; Burden Hours: 1,600.

Abstract: The current Annual Progress Report format for the LAAP grant program was used for formative evaluation last year. With that experience we have refined the Government Performance and Results Act (GPRA) indicators and the measures for collecting data across projects that is comparable, consistent, and reliable. We have also taken a modular approach to structuring the narrative of the report, so that the collection is less burdensome to respondents, yet more useful to program evaluation. Finally, we have augmented the Annual Report data collection by doing a follow-up telephone interview to validate and enrich data, as well as a software evaluation protocol for assessing the quality of the educational software products that may result from the grant projects.

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 Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@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. 01–14840 Filed 6–12–01; 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 July 13, 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: June 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Type of Review: New.

Title: Survey of Parents of Magnet Schools Assistance Program (MSAP) Students and Comparison Students.

Frequency: One Time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 1,150; Burden Hours: 1,035.

Abstract: This package is to request clearance for a Parent Survey associated with the evaluation of the Magnet Schools Assistance Program (MSAP) (MSAP Evaluation has already been cleared under OMB 1875–0174). The purpose of the survey is to provide insights to ED and Congress as to the extent to which parents are satisfied with the choices offered by MSAP-funded schools. The survey has been coordinated with a similar Parent Survey for the charter school evaluation.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov/owa-cgi/owa/browsecoll?psn=01711, 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__RIMG@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. 01–14839 Filed 6–12–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

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), Pantex. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Tuesday, June 26, 2001, 1 p.m.–5 p.m.

ADDRESS: The Wellington Room, Wellington Square @ Interstate 40 and Georgia Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov.*

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:

1:00 Welcome/Agenda Review/Co-chair Comments
1:15 Presentation by Doug Burton Subsurface Irrigation System
1:45 Environmental Management Mid-Year Review Tom Hicks of Amarillo
2:15 Presentation on Albuquerque's Stakeholder Meeting Janette Kelley, Sidney Blankenship and Jerry S. Johnson will present handouts
2:40 Health and Safety Task Force will present recommendations for consideration
3:00 15 minute break
3:15 Discussion of Funding Letter to Secretary Abraham
3:45 Subcommittee and Task Force Reports
4:00 Ex-Officio Reports (Including NEPA Status Reports by Michele Baker)
4:15 Board Member Concern
5:00 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The 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 a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m. Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on June 8, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–14923 Filed 6–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 98–59–NG, et al.]

Office of Fossil Energy; Mirant Americas Energy Marketing, L.P. (Formerly Southern Company Energy Marketing L.P.), et al. Orders Granting and Amending Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2001, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov*, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 7, 2001.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Amending Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1408–A	05–14–01	Mirant Americas Energy Marketing, L.P. (Formerly Southern Company Energy Marketing L.P.)—98–59–NG.			Name change on blanket authority.
1679	05–14–01	Cinergy Marketing & Trading, LLC (Formerly Producers Energy Marketing, LLC)—01–16–NG.	730 Bcf		Import and export a combined total from and to Canada, beginning June 1, 2001, and extending through May 31, 2003.
1680	05–17–01	Aquila Canada Capital and Trade Corp.—01–20–NG.	200 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1681	05–21–01	Aquila Capital and Trade Ltd.—01–19–NG	200 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1682	05–21–01	Aquila Canada Capital and Trade Corp.—01–18–NG		200 Bcf	Export to Canada over a two-year term beginning on the date of first delivery.
1683	05–21–01	Aquila Capital and Trade Ltd.—01–17–NG		200 Bcf	Export to Canada over a two-year term beginning on the date of first delivery.
1684	05–23–01	Conoco, Inc.—01–23–LNG	50 Bcf		Import liquefied natural gas from various international sources over a two-year term beginning on the date of first delivery.
1685	05–24–01	Tractebel Energy Marketing, Inc.—-1–21–LNG	100 Bcf		Import liquefied natural gas from various international sources over a two-year term beginning on the date of first delivery.
1643–A	05–24–01	Cannat Energy Inc. (Formerly Sceptre Energy Inc.)—00–70–NG			Name change on blanket authority.
1686	05–30–01	CMS Marketing, Services and Trading Company—01–24–LNG	440 Bcf		Import liquefied natural gas from various international sources over a two-year term beginning on the date of first delivery.
1687	05–30–01	Pacificorp Power Marketing, Inc.—01–22–NG	58.4 Bcf		Import and export a combined total from and to Canada, over a two-year term beginning on the date of first delivery.

[FR Doc. 01–14876 Filed 6–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–38–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

June 7, 2001.

Take notice that on May 31, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of July 1, 2001:

Fourth Revised Sheet No. 314
Third Revised Sheet No. 315
Fourth Revised Sheet No. 316

CIG states that the filing is being made in compliance with the Commission's order issued November 9, 2000 at Docket No. RM96–1–014, et at.

CIG states that the filing revises the imbalance neeting and trading tariff provisions in response to the Commission's order in this proceeding.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–14849 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–443–000]

Discovery Gas Transmission LLC; Notice of Lost and Unaccounted for Gas Filing

June 7, 2001.

Take notice that on June 1, 2001, Discovery Gas Transmission LLC (Discovery) filed to comply with the terms of its FERC Gas Tariff, First Revised Sheet Nos. 34, 44, and 53 relating to lost and unaccounted for gas for the calendar year 2000.

Discovery states that it has reviewed the amount of lost and unaccounted for gas experienced by the Discovery system during the 2000 calendar year, and based on that review it proposes to retain the current retention rate of 0.5 percent for the period commencing July 1, 2001.

In the June 1, 2001 filing, Discovery filed a request for waiver of section 4 of its FT–1, FT–2, and IT Rate Schedules related to the recovery mechanism for lost and unaccounted for gas.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–14848 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–434–000]

Gas Research Institute; Notice of Annual Application

June 7, 2001.

Take notice that on June 1, 2001, Gas Research Institute (GRI) filed an application requesting advance approval of its 2002–2006 Five-Year Research, Development and Demonstration (RD&D) Plan, and the 2002 RD&D Program and the funding of its RD&D activities for 2002, pursuant to section 154.401 of the Commission's Regulations under the Natural Gas Act, the Commission's Rules of Practice and Procedure, and the Commission's April 29, 1998 Order Approving Settlement [83 FERC ¶ 61,093(1998)].

In its application, GRI states that all aspects of its proposed 2002 Program are consistent with the current Settlement. GRI states that proposed budgets are identical to those approved as part of the Settlement. GRI proposes to incur contract obligations of $60.0 million in 2002. Consistent with the Commission's April 29, 1998 Order Approving Settlement, GRI states that all $60.0 million of the 2002 contract obligations will be for Core Projects. GRI's application seeks to collect funds to support its RD&D program through jurisdictional rates and charges during the twelve months ending December 31, 2002. In addition GRI adds that since actual collections for 2000 of $134.0 million are $9.9 million less than projected, proposed 2002 surcharges are those set forth in the Settlement Agreement adjusted upward by 10 percent consistent with the stated intention of Settlement Agreement Article II, section 1.0 and have the potential to narrow the gap between actual collections and projected revenues by approximately $6 million.

Consistent with the Commission's April 29, 1998 Order Approving Settlement, GRI proposes to fund the 2002 RD&D program by the use of the following surcharges: (1) A demand/reservation surcharge of 6.6 cents per Dth per Month for ''high load factor customers;'' (2) a demand still reservation surcharge of 4.07 cents per Dth per month for ''low load factor customers''; (3) a volumetric commodity/usage surcharge of 0.55 cents; and (4) a special ''small customer'' surcharge of .88 cents per Dth. All of the proposed 2020 surcharges represent decreases from corresponding current levels.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on August 10, 2001. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 24, 2001. GRI's reply comments must be filled on or after August 31, 2001.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, 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 the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 21, 2001. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–14847 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–380–000]

Kern River Gas Transmission Company; Notice of Application

June 7, 2001.

Take notice that on May 30, 2001, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in docket No. CP01–380–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of public convenience and necessity authorizing Kern River to construct and operate: (1) A 12-inch mainline tap on Kern River's mainline north of Las Vegas; (2) approximately 3.54 miles of 16-inch diameter delivery lateral pipeline in Clark County, Nevada (Moapa Lateral); and (3) a delivery meter station at the terminus of the lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.rimsweb1.ferc.fed.us/rims.q?rp2~intro.* (call 202–208–2222 for assistance).

Specifically, Kern River requests authorization to construct the Moapa Lateral to provide up to 218.8 MMcf per day of natural gas to Duke Energy North America, LLP (Duke) to fuel its proposed 1,200 megawatt gas-fired power plant near Moapa, Nevada. Transportation service to the plant will be provided under authorized Part 284 transportation service agreements.

The estimated cost of the proposed lateral facilities is approximately $3.8 million. Duke will reimburse Kern River for all of the actual costs of the proposed

facilities, plus associated income taxes, by making a lump sum payment upon completion of construction. Kern River requests a final certificate order no later than May 2, 2002, in order to complete the project before November 2002, the date Duke estimates it will require test gas for its new plant.

Because the pipeline will cross environmentally sensitive areas, i.e. the critical habitat of the desert tortoise, kern River states that it is seeking a case specific certificate, rather than pursuing this pipeline construction project under its Part 157, Subpart F, blanket certificate authority.

An questions regarding this application should be directed to Mr. Gary Kotter, Manager, Certificates, Kern River Gas Transmission Company, P.O. Box 58900, Salt Lake City, Utah 84158–0900 or call (801) 584–7117.

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 *June 20, 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 of 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.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests 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.gov/documents/makeanelectronicfiling/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. 01–14852 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–399–002

National Fuel Gas Supply Corporation; Notice of Compliance Filing

June 7, 2001.

Take notice that on June 4, 2001, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, revised *pro forma* tariff sheets, in compliance with Order Nos. 637 and 637–A.

National Fuel states that the filing is made to revise *pro forma* tariff sheets filed in Docket No. RP00–399–000 on July 17, 2000, in compliance with Order No. 637, and to make other revisions to tariff sheets that were not included in the July 17, 2000 filing. National Fuel states that the revised *pro forma* tariff sheets are the results of a collaborative process involving a number of discussions among the parties to the proceeding.

National Fuel states that copies of the filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–14851 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–042]

Williams Gas Pipelines Central, Inc., Notice of Filing

June 7, 2001.

Take notice that on May 31, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a proposed refund plan for the distribution of Kansas ad valorem taxes pursuant to the Commission's October 11, 2000, Order Approving Settlement, and the December 13, 2000, Order Granting Clarification. Williams states that since it does not have sufficient information at a working interest owner level to determine the ad valorem taxes and related interest for each applicable year of the refund period (1984 through 1988), it is proposing to calculate the jurisdictional portion of the refunds based on the jurisdictional percentage for the entire period.

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, NE., Washington, DC 20426, in accordance with sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All such motions and comments must be filed on or before June 21, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web 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.* Applicant's designated contact person is Gary W. Boyle at 918–573–2359.

David P. Boergers,

Secretary.

[FR Doc. 01–14853 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–446–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 7, 2001.

Take notice that on June 4, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to filing, to become effective July 4, 2001.

Williston Basin states that the revised tariff sheets are being filed to make certain tariff modifications necessary to correct and/or clarify its Tariff as more fully explained in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–14846 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 7, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12010–000.

c. *Date filed:* April 26, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Crocker Diversion Project would be located on the Merced River in Merced County, California. The project would be located on an existing dam owned by the Merced Irrigation District.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442 (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date 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. Motions to intervene, protests, and comments 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.

Please include the project number (P–12010–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener filed 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.

j. *Description of Project:* The proposed project would use the existing Crocker Diversion Reservoir which has a surface area of 56 acres and a storage capacity of 300 acre-feet at 750 feet msl and

include: (1) A proposed powerhouse with a total installed capacity of 21 megawatts; (2) a proposed 300-foot-long, 20-foot-diameter penstock; (3) a proposed 3-mile-long, 25 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 117 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment data for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14841 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 7, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12009–000.

c. *Date filed:* April 26, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Mathews Dam Project would be located on the Santa Ana River in Riverside County, California. The project would be located on an existing dam owned by the Metropolitan Water District.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date 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. Motions to intervene, protests, and comments may be fled 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.

Please include the projected number (P–12009–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

j. *Description of Project:* The proposed project would use the existing Mathews Reservoir which has a surface area of 2,750 acres and a storage capacity of 182,000 acre-feet at 1,404 feet msl and include: (1) A proposed powerhouse with a total installed capacity of 4.4 megawatts; (2) a proposed 200-foot-long, 10-foot-diameter penstock; (3) a proposed 5-mile-long, 15 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 29.5 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 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 g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14842 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 7, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11996–000.

c. *Date filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Stockton Dam Project would be located on the Sac River in Cedar County, Missouri. The project would be located on a federal-owned dam administered by the U.S. Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442 (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date 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. Motions to intervene, protests, and comments 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.

Please include the project number (P–11996–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an

intervener 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.

j. *Description of Project:* The proposed project would use the existing Stockton Lake Reservoir which has a surface area of 24,900 acres and a storage capacity of 892,000 acre-feet at 867 feet msl and include: (1) A proposed powerhouse with a total installed capacity of 8.9 megawatts; (2) two proposed 100-foot-long, 8-foot-diameter penstocks; (3) a proposed 14-mile-long, 33 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 38.2 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 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 g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14843 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 7, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11989–000.

c. *Date filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Painted Rock Dam Project would be located on the Gila River in Maricopa County, Arizona. The project would be located on a federally-owned dam administered by the U.S. Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, fax (208) 745–7909.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date 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. Motions to intervene, protests, and comments 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.

Please include the project number (P–11989–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all

interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

j. *Description of Project:* The proposed project would use the existing Painted Rock Reservoir which has a surface area of 53,200 acres and a storage capacity of 2,490,000 acre-feet at 705 msl and include: (1) A proposed powerhouse with a total installed capacity of 5.2 megawatts; (2) a proposed 950-foot-long, 25-foot-diameter penstock; (3) a proposed 10-mile-long, 25 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 23 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 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 g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14844 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Issued: June 7, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a: *Application Type:* Temporary Amendment to License.

b: *Project No.:* 5891–006.

c: *Date Filed:* June 5, 2001.

d: *Applicant:* Deschutes Valley Water District.

e: *Name of Project;* Opal Springs Hydroelectric Project.

f: *Location:* The Opal Springs Hydroelectric Project is located on the Crooked River, a tributary to the Deschutes River in Jefferson County, Oregon.

g: *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h: *Applicant Contact:* Mr. Robert MacRostie, General Manager, Deschutes Valley Water District, 881 S.W. Culver Highway, Madras, Oregon 97741; (541) 475–3849; *rwmacrosti@aol.com.*

i: *FERC Contact:* Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.fed.us.* The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. Deadline for filing comments, terms and conditions, motions to intervene, and protests: 14 days from the issuance date 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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.

Comments, recommendations, terms and conditions, 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.

k. Deschutes Valley Water District (DVWD) filed an application, with the concurrence of the Oregon Department's of Fish and Wildlife and Environmental Quality, to reduce flows in the bypass reach from 50 cfs to a 10 cfs leakage flow, between June 15, 2001 and September 30, 2001. In addition, DVWD proposes to add spawning gravel to the river in the vicinity of the powerhouse. DVWD states that this modification to project operations will increase generation by approximately 120 kilowatts (kW).

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–14845 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–409–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

June 7, 2001.

On July 17, 2000, Natural Gas Pipeline Company of America (Natural) submitted its filing to comply with Order No. 637. Several parties have protested various aspects of Natural's filing.

Take notice that a technical conference to discuss the various issues raised by Natural's filing will commence on Tuesday, July 10, 2001, at 10:00 a.m.

The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Parties protesting aspects of Natural's filing should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–14850 Filed 6–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 6, 2001.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 13, 2001., 10:00 A.M.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

768th—Meeting June 13, 2001, Regular Meeting, 10:00 A.M.

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
- DOCKET#ER01–1810,000, AMEREN ENERGY MARKETING COMPANY

CAE–2. OMITTED

CAE–3.
- DOCKET#ER01–1229,000, VALLEY ELECTRIC ASSOCIATION, INC.
- OTHER#SER01–1229,001, VALLEY ELECTRIC ASSOCIATION, INC.

CAE–4.
- DOCKET#ER01–1866,000, ENTERGY SERVICES, INC.
- OTHER#SER01–1593,000, ENTERGY SERVICES, INC.
- ER01–1593,001, ENTERGY SERVICES, INC.

CAE–5.
- DOCKET#ER01–1718,000, DYNEGY POWER MARKETING, INC.
- OTHER#SER00–2998,001, SOUTHERN COMPANY SERVICES, INC.
- ER00–2999,001, SOUTHERN COMPANY SERVICES, INC.
- ER00–3000,001, SOUTHERN COMPANY SERVICES, INC.
- ER00–3001,001, SOUTHERN COMPANY SERVICES, INC.
- ER01–1718,001, DYNEGY POWER MARKETING, INC.

CAE–6.
- DOCKET#ER01–2076,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

CAE–7.
DOCKET#ER00–3591,006, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OTHER#SER00–1969,007, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–8.
DOCKET#ER01–200,000, CINERGY SERVICES, INC.
OTHER#SER01–200,001, CINERGY SERVICES, INC.
CAE–9.
DOCKET#ER01–1306,000, CARGILL-ALLIANT, LLC
CAE–10.
DOCKET#EC96–19,055, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#SER96–1663,058, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–11.
OMITTED
CAE–12.
DOCKET#ER00–1483,001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–13.
DOCKET#EC01–91,000, PACIFICORP
CAE–14.
DOCKET#EC01–63,000, NIAGARA MOHAWK HOLDINGS, INC. AND NATIONAL GRID USA
OTHER#EL01–56,000, NIAGARA MOHAWK HOLDINGS, INC. AND NATIONAL GRID USA
CAE–15.
OMITTED
CAE–16.
DOCKET#TX00–1,001, UNITED STATES DEPARTMENT OF ENERGY-WESTERN AREA POWER ADMINISTRATION, COLORADO RIVER STORAGE PROJECT MANAGEMENT CENTER
OTHER#SER00–896,001, PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–17.
DOCKET#OA96–81,001, INDIANAPOLIS POWER & LIGHT COMPANY
CAE–18.
DOCKET#ER98–1106,001, NEW ENGLAND POWER COMPANY, BANGOR HYDRO-ELECTRIC COMPANY, BOSTON EDISON COMPANY, CENTRAL MAINE POWER COMPANY, CENTRAL VERMONT PUBLIC SERVICE CORPORATION, COMMONWEALTH ELECTRIC COMPANY, FITCHBURG GAS AND ELECTRIC LIGHT COMPANY, GREEN MOUNTAIN POWER CORPORATION, MONTAUP ELECTRIC COMPANY, NORTHEAST UTILITIES COMPANY, UNITED ILLUMINATING COMPANY AND VERMONT ELECTRIC POWER COMPANY
CAE–19.
DOCKET#ER99–1142,006, NEW ENGLAND POWER POOL
OTHER#SER99–2892,001, NEW ENGLAND POWER POOL
CAE–20.
DOCKET#EL00–45,001, WISCONSIN PUBLIC POWER, INC. V. WISCONSIN POWER AND LIGHT COMPANY AND ALLIANT ENERGY, INC.
CAE–21.
DOCKET#OA96–194,007, NIAGARA MOHAWK POWER CORPORATION
CAE–22.
DOCKET#ER00–3316,001, AMERICAN TRANSMISSION COMPANY, LLC
CAE–23.
DOCKET#RT01–67 002, GRIDFLORIDA LLC, FLORIDA POWER & LIGHT COMPANY, FLORIDA POWER CORPORATION AND TAMPA ELECTRIC COMPANY
CAE–24.
DOCKET#OA01–5, 000, CITIZENS COMMUNICATIONS COMPANY
CAE–25.
OMITTED
CAE–26.
DOCKET#EL01–69 000, FIRSTENERGY OPERATING COMPANIES AND AMERICAN TRANSMISSION SYSTEMS, INC.
CAE–27.
DOCKET#EL01–59,000, TRANSÉNERGIE U.S. LTD. AND CROSS SOUND CABLE COMPANY, LLC
OTHER#SEC01–110,000, TRANSÉNERGIE U.S. LTD. AND CROSS SOUND CABLE COMPANY, LLC
CAE–28.
DOCKET#EL01–51,000, DETROIT EDISON COMPANY
OTHER#SEL01–51,001, DETROIT EDISON COMPANY
EL01–51,002, DETROIT EDISON COMPANY
ER01–1649,000, DETROIT EDISON COMPANY
ER01–1649,001, DETROIT EDISON COMPANY
ER01–1649,002, DETROIT EDISON COMPANY
CAE–29.
DOCKET#EL01–78,000, LG&E ENERGY MARKETING, INC.
CAE–30.
DOCKET#OA97–24,005, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, SOUTHWESTERN ELECTRIC POWER COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA
OTHER#SER97–881,001, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, SOUTHWESTERN ELECTRIC POWER COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA
ER98–4609,002, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, SOUTHWESTERN ELECTRIC POWER COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA
ER98–4611,003, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, SOUTHWESTERN ELECTRIC POWER COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA
CAE–31.
DOCKET#ER01–1847,000, ALLEGHENY ENERGY SUPPLY COMPANY, LLC
OTHER#SER00–2998,001 SOUTHERN COMPANY SERVICES, INC.
ER00–2999,001, SOUTHERN COMPANY SERVICES, INC.
ER00–3000,001, SOUTHERN COMPANY SERVICES, INC.
ER00–3001,001, SOUTHERN COMPANY SERVICES, INC.
CAE–32.
OMITTED
CAE–33.
DOCKET#EL00–62,004, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
OTHER#SEL00–62,006, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,008, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,011, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,012, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,014, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,016, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,019, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
EL00–62,024, ISO NEW ENGLAND, INC. AND NEW ENGLAND POWER POOL
CAE–34.
DOCKET#ER98–3853,005, NEW ENGLAND POWER POOL

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
DOCKET#RP01–416,000, NORTHWEST PIPELINE CORPORATION
CAG–2.
OMITTED
CAG–3.
DOCKET#RP01–423,000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–4.
DOCKET#RP01–419,000, TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–5.
DOCKET#PR01–5,000, MAGIC VALLEY PIPELINE, L.P.
CAG–6.
DOCKET#PR01–8,000, ARKANSAS OKLAHOMA GAS CORPORATION
CAG–7.
DOCKET#RP01–93,000, KERN RIVER GAS TRANSMISSION COMPANY
CAG–8.
DOCKET#PR00–9,000, EPGT TEXAS PIPELINE, L.P.
CAG–9.
DOCKET#RP95–408,040, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–10.
DOCKET#RP00–223,004, NORTHERN NATURAL GAS COMPANY
CAG–11.
OMITTED
CAG–12.
DOCKET#RP01–278,001, TEXAS GAS TRANSMISSION CORPORATION
CAG–13.
DOCKET#RP95–197,040, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#SRP97–71,028, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–14.

DOCKET#MG00–6,007, DOMINION TRANSMISSION, INC.
OTHER#SMG00–6,008, DOMINION TRANSMISSION, INC.
CAG–15.
DOCKET#OR00–3,000, COLONIAL PIPELINE COMPANY
OTHER#SOR95–9,000, COLONIAL PIPELINE COMPANY

Consent Agenda—Energy Projects—Hydro

CAH–1.
DOCKET#P–2436,139, CONSUMERS ENERGY COMPANY
CAH–2.
DOCKET#P–6879,027, SOUTHEASTERN HYDRO-POWER, INC.
OTHER#SP–6879,026, SOUTHEASTERN HYDRO-POWER, INC.
CAH–3.
OMITTED
CAH–4.
DOCKET#P–5,045, PPL MONTANA, LLC, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

Consent Agenda—Energy Projects—Certificates

CAC–1.
DOCKET#CP00–68,000, QUESTAR PIPELINE COMPANY
OTHER#SCP00–68,001, QUESTAR PIPELINE COMPANY
CAC–2.
DOCKET#CP98–131,004, VECTOR PIPELINE L.P.
CAC–3.
DOCKET#CP01–179,000, GEORGIA STRAIGHT CROSSING PIPELINE LP
CAC–4.
DOCKET#CP96–206,001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#SCP96–207,001, WILLIAMS GAS PROCESSING—GULF COAST COMPANY, L.P.
CAC–5.
DOCKET#CP01–66,000, EGAN HUB PARTNERS, L.P.
CAC–6.
DOCKET#CP00–48,003, TENNESSEE GAS PIPELINE COMPANY
OTHER#S CP00–48,004, TENNESSEE GAS PIPELINE COMPANY

ENERGY PROJECTS—HYDRO AGENDA

H–1.
RESERVED

ENERGY PROJECTS—CERTIFICATES AGENDA

C–1.
RESERVED

MARKETS, TARIFFS AND RATES—ELECTRIC AGENDA

E–1.
RESERVED

MARKETS, TARIFFS AND RATES—GAS AGENDA

G–1.
RESERVED

David P. Boergers,
Secretary.

[FR Doc. 01–14951 Filed 6–8–01; 5:08 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Intent To Relieve Path 15 Transmission Constraints

AGENCY: Western Area Power Administration, DOE.

ACTION: Request for Statements of Interest.

SUMMARY: The National Energy Policy Report announced on May 17, 2001, recommended that the President direct the Secretary of Energy (Secretary) to authorize the Western Area Power Administration (Western) to explore relieving the ''Path 15'' bottleneck through transmission expansion. The Path 15 bottleneck refers to transmission system constraints which severely limit the flow of electric power over the existing north-south transmission lines located in central California. These existing lines are owned and operated by Pacific Gas and Electric Company (PG&E).

On May 28, 2001, the Secretary directed the Administrator of Western to complete its planning to relieve Path 15 constraints, and determine whether outside parties are interested in helping finance and co-own the necessary system additions, including transmission lines. The level of interest will be a factor in the decision by the Secretary whether or not to build the system additions necessary to relieve the constraints. If the system additions are built under this process, Western will be a project manager for the construction efforts.

In this notice, Western is requesting Statements of Interest from parties interested in helping finance and co-own the system additions.

DATES: To be assured of consideration, all Statements of Interest should be received at Western's Sierra Nevada Regional Office by July 13, 2001.

ADDRESSES: The Statements of Interest should be mailed to: Mr. Howard Hirahara, Acting Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. Statements of Interest may also be faxed to (916) 985–1934 or e-mailed to *path15@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning the Statements of Interest, contact: Mr. Howard Hirahara, Acting Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4416.

SUPPLEMENTARY INFORMATION: It was recognized in the 1980s that, under certain power system conditions, the flow of electric power over Path 15 could be severely limited. Western, the Transmission Agency of Northern California (TANC), and PG&E studied the possibility of constructing system additions to relieve Path 15 constraints as part of the planning effort for the California-Oregon Transmission Project (COTP.) The COTP was authorized by the Energy and Water Development Appropriation Act, 1985, Public Law 98–360, 98 Stat. 403, 416, (1984). In 1988, Western released a final Federal environmental impact statement (EIS), and TANC released a final environmental impact review under California law, on the transmission facilities needed for the COTP. The plan included system additions, known as the Los Baños-Gates Transmission Project, to relieve the Path 15 bottleneck. At that time, the Los Baños—Gates Transmission Project would have consisted of 84 miles of new 500-kilovolt (kV) AC transmission line, realignment of the existing Los Baños-Midway No. 2 500-kV transmission line into Gates Substation, modification of the Los Baños and Gates Substations to accommodate new equipment at several existing substations, and reconductoring of portions of the Gates-Arco-Midway 230-kV Transmission Line. It was subsequently determined in the Final EIS that the timing and need for the project were uncertain and if its construction was deferred it would be necessary to make minor modifications to the transmission system south of Tesla Substation to accommodate the increased power transfer demands that would be placed on the system. The COTP was built and placed in service in March 1993. For a variety of reasons, the Los Baños-Gates Transmission Project was not built.

Given the current energy problems in California, including the bankruptcy of the PG&E, the Secretary has now directed Western to complete its planning for the transmission project and to determine whether outside parties are interested in helping to finance and co-own the system additions. Western has general authority under the Department of Energy

Organization Act to construct, operate, and maintain transmission lines and attendant facilities. Western has project-specific authority under the Energy and Water Development Appropriation Act, 1985, *supra,* to construct or participate in the construction of system additions in the Los Baños-Gates area to relieve the Path 15 bottleneck.

Western's initial step is to identify all entities interested in participating in the financing and co-ownership of Path 15 system additions. For this initial step, interested parties should assume that the system additions would be very similar to those proposed in 1988 for the Los Baños—Gates Transmission Project. Western estimates that the cost of the Project today would be approximately $200–300 million. Those entities should submit Statements of Interest including the following:

1. Name of requesting entity and experience in financing electric utility transmission projects.
2. Name, telephone number, facsimile number, and e-mail address of management contact.
3. Name, telephone number, facsimile number, and e-mail address of technical contact.
4. Amount of financing they are willing to contribute to the project.
5. Amount and type of ownership rights they seek.
6. Description of non-monetary contributions they are willing to offer to the project.
7. Description of the proposed participation in sufficient detail to enable Western to evaluate the proposal.
8. Amounts and types of transmission rights they wish to purchase.

Western then will analyze the Statements of Interest. The level of interest will be a factor in the decision by the Secretary whether or not to build the system additions necessary to relieve the Path 15 constraints.

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget for the collection of this information under control number 1910–1200.

Western will prepare the necessary environmental and feasibility studies and review easement and land acquisition issues related to the project. Western will review the 1988 COTP EIS and 1991 Supplement Analysis to determine what further action must be taken to comply with National Environmental Policy Act of 1969 and other environmental laws and regulations.

Dated: June 2, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–14874 Filed 6–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool—Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocation.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, announces its Post-2004 Resource Pool—Salt Lake City Area Integrated Projects (SLCA/IP) Proposed Allocation of Power. This allocation fulfills the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule. The Post-2004 Resource Pool Proposed Allocation of Power is Western's application of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule to the SLCA/IP.

DATES: All comments must be received by the end of the comment period, to be assured of consideration. The comment period on the Proposed Allocation of Power begins today and ends October 11, 2001.

ADDRESSES: All comments regarding the Proposed Allocation of Power should be directed to the following address: Mr. Burt Hawkes, Power Marketing and Contracts, CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606. Comments may also be faxed to (801) 524–5017 or e-mailed to *POST2004SLCIP@WAPA.GOV.*

FOR FURTHER INFORMATION CONTACT: Mr. Burt Hawkes, Power Marketing and Contracts, (801) 524–3344, or Lyle Johnson, Public Utilities Specialist, (801) 524–5585. Written requests for information should be sent to CRSP Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606.

SUPPLEMENTARY INFORMATION: Western will also consult with the applicants and interested parties at the combined public information forums and comment forums, which are planned for Albuquerque, New Mexico; Las Vegas, Nevada; Phoenix, Arizona; and Salt Lake City, Utah. Notification of the location and times of the forums will be given in a subsequent **Federal Register** notice at least 30 days prior to the first of these forums. All documentation developed or retained by Western in developing the Proposed Allocation of Power will be available for inspection and copying at the CRSP Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah. After all public comments have been thoroughly considered, Western will prepare and publish the Final Allocation of Power in the **Federal Register**.

Western published its decision on June 25, 1999, at 64 FR 34414, to apply Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905 to the SLCA/IP. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Western's power allocation criteria and call for applications for power were published in the **Federal Register** at 64 FR 48825, September 8, 1999, and revised and clarified in the **Federal Register** at 65 FR 11303, March 2, 2000. These established the framework for allocating power from the resource pool to be established from the SLCA/IP. Applications for power were accepted at Western's Colorado River Storage Project (CRSP) Management Center until close of business on June 8, 2000. The Proposed Allocation of Power published herein is the result of Western's decision in response to those applications. Only comments relevant to the proposed allocations will be accepted during this period. A **Federal Register** notice of the final allocations of power will address the comments received during the comment period.

I. Proposed Allocation of Power

Western will respond to the comments received about the Proposed Allocation of Power and publish its final allocations after the public comment period ends. If any adjustments or corrections are necessary in a recipient's allocation, the fixed size of the pool will cause the change to affect the allocations of all other recipients. Western plans to enter into contracts with new customers after publication of that notice.

The SLCA/IP Post-2004 Power Pool will consist of 7 percent of the SLCA/IP firm power resources available on October 1, 2004. On this date, 7 percent of the firm power resources will be withdrawn from current customers and

allocated to new customers. In addition, another 7 megawatts (MW) of capacity and associated energy (14,660,861 kilowatthours (kWh) in the Winter Season and 15,350,991 kWh in the Summer Season) will be withdrawn from Tri-State Generation and Transmission Association (Tri-State) and included in the Post-2004 Power Pool. These 7 MW will be made available to Navopache Electric Cooperative (Navopache). Navopache, as a member of Plains Electric Generation and Transmission Cooperative, Inc. (Plains), had received SLCA/IP power through Plains for many years. However, Navopache decided not to participate in a recent merger between Plains and Tri-State. Because the Federal power allocation was under contract to Plains rather than Navopache, Navopache lost its share of the benefits of Plains' Federal power allocation when the merger was completed in 2000. Consistent with Western's policy of encouraging the widespread distribution of Federal power, Western is remedying this situation by reducing the Plains/Tri-State allocation by 7 MW in both seasons, effective October 1, 2004, and allocating 7 MW in each season with 14,660,861 kWh available in the Winter Season and 15,350,991 kWh in the Summer Season to Navopache.

Western received applications for power from 57 Native American tribes or organizations and 9 utilities. Following the established criteria of allocating first to Native American tribes with the stated target of serving 65 percent of the eligible loads, the tribes' Applicant Profile Data (APD) indicated that the electrical loads of these Native American tribes were large enough to require the entire Post-2004 Power Pool be allocated to the qualifying Native American tribes. Navopache is the only non-tribal applicant that will receive an allocation.

Since the entire Post-2004 Power Pool was used to meet the commitment to Navopache and to meet the needs of Native American applicants, there is no power available for the remaining eight new applicants. Accordingly, Western is unable to allocate SLCA/IP power to the following: Utah Transit Authority; Deseret Chemical Depot; U.S. Department of Energy, Sandia National Laboratories; U.S. Department of Energy, Waste Isolation Pilot Project; Town of Fredonia, Arizona; City of Monticello, Utah; City of Eagle Mountain, Utah; and Washington County Water Conservancy District.

Several tribes within the SLCA/IP marketing area were determined ineligible for an allocation of power from the Post-2004 Power Pool primarily because they did not meet the qualifying criteria or failed to submit proper applications. Tribes that have not been assigned a proposed allocation include the following:

Tribe	Reason
Ak Chin Indian Community	Current allocation of Federal power exceeds 65 percent of Indian total load.
Cherokee Nation Southwest Longhair Tribe	Not a Federally recognized tribe. No reservation; no electrical load during the base year.
Colorado River Indian Tribes	Current Federal power available exceeds 65 percent of total load.
Navajo Agricultural Products Industry	Current reservation of Federal power exceeds 65 percent of total load.
San Juan Southern Paiute	No reservation. Receive benefits of an allocation through Navajo Tribal Utility Authority.

Four tribes, the Moapa Band of Paiutes, the Pueblo of San Ildefonso, the Pueblo of Santo Domingo, and the Pueblo of Taos, submitted incomplete applications. No allocations are proposed for these tribes.

Western's intent is that the benefits of Federal power be made available first to Native American individuals, businesses, and tribal loads and to essential services existing on reservations that may be owned by non-Native Americans. Because the Post-2004 Power Pool is not large enough to meet the goal of serving 65 percent of the total loads of the Native American applicants, Western is able to allocate power only for those uses as initially intended. If there had been unallocated energy remaining in the Post-2004 Power Pool, Western would have considered allocating it to non-Native American loads on the reservations.

For the two tribes, the Gila River Indian Community and the Tonto Apache Tribe, that did not separate their commercial and industrial loads into Indian- and non-Indian-owned loads, Western used the amount of energy reported in the small commercial category of their APDs as estimates of their Indian-owned load on their respective reservations.

The Power Allocation Procedures published September 8, 1999, state, ''For Native American Tribes currently receiving power from utilities that have allocations of Federal power resources, Western will take into account the benefit received through the existing supplier when determining their allocations.'' Accordingly, the percentage of Western service that each of the tribes receives through its current power supplier(s) was used in determining the allocations for tribes served by current Western customers. The White Mountain Apache Tribe's (White Mountain) allocation was calculated using the percentage of service that its serving utility, Navopache, will receive when service to Navopache and White Mountain begins on October 1, 2004. This is consistent with the method used to determine allocations to the other applicant tribes that are served by utilities that receive Federal power.

Energy from the Post-2004 Power Pool was allocated to the applicants in a manner consistent with the intent of the criteria in that each tribe received an equal percent of its energy needs from the Post-2004 Power Pool. Energy was allocated using the following formula:

Post-2004 Proposed Allocation = EL × (P − C)

Where

EL = Eligible loads, the sum of reported residential, agricultural, Indian-owned commercial, and other essential service loads.

P = Percent of eligible load served, not to exceed 65 percent.

C = Percent of eligible load currently served by Federal power.

Contract rates of delivery (CROD) were determined by applying Western's seasonal load factors of 49.4 percent in the Winter Season and 53.1 percent in the Summer Season to the energy allocations. The resulting allocations serve 61.2 percent of the tribal applicants' Winter Season and 59.3 percent of their Summer Season loads. The resource pool was not large enough to serve any non-Indian-owned loads.

The proposed allocations of power for new Native American customers are as follows:

Salt Lake City Area Integrated Projects	Proposed Post-2004 Power Allocations			
Native American Tribes or Organizations	Winter Seasonal Energy (kWh)	Summer Seasonal Energy (kWh)	Winter Seasonal CROD (kW)	Summer Seasonal CROD (kW)
Alamo Navajo Chapter	520,517	467,324	241	199
Canoncito Navajo Chapter	384,767	342,392	178	146
Cocopah Indian Tribe	2,622,934	2,987,305	1,216	1,274
Confederated Tribes of the Goshute Reservation	157,457	93,602	73	40
Duckwater Shoshone Tribe	170,417	164,419	79	70
Ely Shoshone Tribe	326,822	185,540	151	79
Fort Mojave Indian Tribe	984,261	1,122,834	456	479
Ft. McDowell Mojae-Apache Indian Community	5,643,637	5,491,311	2,615	2,342
Gila River Indian Community	24,007,510	21,831,572	11,126	9,310
Havasupai Tribe	590,971	468,834	274	200
Hopi Tribe	6,963,674	6,333,627	3,227	2,701
Hualapai Tribe	1,519,945	1,471,351	704	627
Jicarilla Apache Tribe	1,955,562	1,470,092	906	627
Kiabab Band of Paiute Indians	13,892	10,156	6	4
Las Vegas Paiute Tribe	1,296,112	1,680,347	601	717
Mescalero Apache Tribe	2,634,241	2,473,888	1,221	1,055
Nambe Pueblo	173,892	148,429	81	63
Navajo Tribal Utility Authority	62,990,277	50,935,888	29,192	21,722
Paiute Indian Tribe of Utah	392,204	380,489	182	162
Pascua Yaqui Tribe	2,577,307	3,105,707	1,194	1,324
Picuris Pueblo	58,763	192,033	27	82
Pueblo De Cochiti	556,234	431,475	258	184
Pueblo of Acoma	1,091,073	1,065,061	506	454
Pueblo of Isleta	2,748,820	2,559,866	1,274	1,092
Pueblo of Jemez	704,202	542,516	326	231
Pueblo of Laguna	2,003,804	1,881,827	929	803
Pueblo of Pojoaque	721,462	527,582	334	225
Pueblo of San Felipe	1,044,582	764,873	484	326
Pueblo of San Juan	1,620,183	1,569,299	751	669
Pueblo of Sandia	2,024,432	2,198,256	938	937
Pueblo of Santa Clara	1,413,816	1,124,568	655	480
Pueblo of Santo Domingo	1,086,300	1,053,375	503	449
Pueblo of Tesuque	738,366	705,739	342	301
Pueblo of Zia	225,272	173,537	104	74
Pueblo of Zuni	3,154,688	2,585,656	1,462	1,103
Quechan Indian Tribe	1,807,040	1,177,660	837	502
Ramah Navajo Chapter	1,095,757	760,531	508	324
Salt River Pima-Maricopa Indian Community	33,272,972	37,793,973	15,420	16,118
San Carlos Apache Tribe	8,507,052	8,766,037	3,942	3,738
Santa Ana Pueblo	1,016,119	1,072,447	471	457
Skull Valley Band of Goshute Indians	36,688	35,576	17	15
Southern Ute Indian Tribe	3,125,651	2,846,489	1,449	1,214
Tohono O'Odham Utility Authority	2,292,447	2,056,301	1,062	877
Tonto Apache Tribe	865,611	891,647	401	380
Ute Indian Tribe	1,832,215	1,158,870	849	494
Ute Mountain Ute Tribe	1,351,661	1,208,840	626	516
White Mountain Apache Tribe	15,078,751	13,797,601	6,988	5,884
Wind River Reservation	1,307,138	1,227,998	606	524
Yavapai Apache Nation	3,631,777	4,414,186	1,683	1,882
Yavapai Prescott Indian Tribe	6,866,719	7,429,022	3,182	3,168
Yomba Shoshone Tribe	75,518	73,229	35	31
Total	217,281,509	203,251,178	100,696	86,678

II. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. section 601–621 (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this is a rulemaking of particular applicability relating to services offered by Western and, therefore, is not a rule within the purview of the Act. In addition, the requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

III. Review Under the National Environmental Policy Act

Western has completed environmental impact statements (EIS) on the Program, and on the marketing of SLCA/IP power pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality regulations (40 CFR parts 1500–1508); and DOE NEPA regulations (10 CFR part 1021). The Records of Decision were

published in the **Federal Register** (60 FR 53181, October 12, 1995; and 61 FR 56534, November 1, 1996). Since then, Western has determined that this action is categorically excluded from preparation of an additional environmental assessment or EIS. See Appendix B4.1 of subpart D of 10 CFR part 1021. Accordingly, no further environmental assessment will be conducted.

IV. Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Dated: May 30, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–14875 Filed 6–12–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6996–2]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request; Annual Updates of Emission Data to Aerometric Information Retrieval System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following Information Collection Request (ICR) renewal to the Office of Management and Budget (OMB):

Annual Updates of Emission Data to Aerometric Information Retrieval System (AIRS), EPA ICR No. 916.11, OMB Control Number 2060–0088, Expiration Date 8/31/2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 13, 2001.

ADDRESSES: United States Environmental Protection Agency; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division (MD–14); Research Triangle Park, NC 27711. Interested persons may obtain a copy of the ICR without charge from *www.epa.gov/ttn/chief/.*

FOR FURTHER INFORMATION CONTACT: David Misenheimer; Telephone (919) 541–5473; Email: *misenheimer.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State and Territorial air pollution control agencies which collect and report emissions information from stationary sources emitting at least prescribed amounts of pollutants.

Title: Annual Updates of Emission Data to Aerometric Information Retrieval System (AIRS) (OMB Control Number 2060–0088; EPA ICR No. 916.11) expiring 8/31/2001.

Abstract: This ICR deals with reports required by 40 CFR 51.321, 51.322, and 51.323. The respondents (States) are required to annually update information on stationary sources emitting at least prescribed amounts of pollutants regulated by National Ambient Air Quality Standards (NAAQS) via electronic input to EPA. EPA's Office of Air Quality Planning and Standards (OAQPS) uses the annual emission reports to update a national data base on air emissions which it has maintained since 1974. The data is used in developing emission standards, applying dispersion models, preparing national trend assessments, preparing reports to Congress, providing information to the public, and other special analyses and reports. 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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: An estimated 54 States and Territorial air pollution control agencies will be required to record and report emission information on significant stationary sources on an annual basis. Reporting and record keeping of this information is estimated to involve an average of 212 hours per year by each State and Territorial air pollution control agency. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. 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.

Dated: June 1, 2001.

J. David Mobley,

Acting Director; Emissions, Modeling and Analysis Division.

[FR Doc. 01–14904 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6995–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting Requirements under EPA's National Wastewater Operator Training and Technical Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management

and Budget (OMB) for review and approval: National Wastewater Operator Training and Technical Assistance Program, EPA ICR Number 1977.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 13, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1977.01 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1977.01. For technical questions about the ICR, contact Curt Baranowski at 202–564–0636 in the U.S. EPA, Office of Wastewater Management, Municipal Assistance Branch (Mail Code 4204–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are state and local governments, state and county colleges, and those organizations which provide training assistance through the Clean Water Act 104(g)(1) Program to municipal wastewater treatment plants.

Estimated Number of Respondents: 48.

Frequency of Response: Biannually and annually.

Estimated Total Annual Hour Burden: 336.

Estimated Total Annualized Capital, O & M Cost Burden: $0.

Title: National Wastewater Treatment Plant Operator Training and Technical Assistance Program. This non-rule ICR is a new collection.

Abstract: The Wastewater Operator Training Program provides on-site technical assistance to municipal wastewater treatment plants. Information will be collected from the network of forty-eight 104(g)(1) training centers set up throughout the United States. The information will be collected to identify the facilities assisted, the different types of assistance the program provides and the environmental outcomes and benefits of the assistance provided by the program. The information will be collected and submitted on either an annual or semi-annual basis. A database and spreadsheet have been developed for this purpose. This ICR will be used by EPA for the technical and financial management of the 104(g)(1) Program. The 104(g)(1) Program training centers shall participate in the information collection, due to the fact that it is a mandatory grant condition. All information in the data system will be made public upon request.

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 30, 2001. No comments were received.

Burden Statement: The average annual burden hours to each 104(g)(1) training center grantee will be 7 hours, for a total of 336 hours per year. Data will be collected on an annual basis, in May of each year, for the database collection, and data for the spreadsheet information collection will be conducted on a semi-annual basis, in May and November of each year. Reporting requirements will be included as grant conditions, so it is expected that 100% of the 104(g) training centers will respond to this collection request. All forty-eight (48) training centers and EPA have the necessary equipment, desk-top computers and software, to collect and manage this information. There will be no additional start-up or maintenance costs associated with this project to perform this information collection request. 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.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 1977.01 in any correspondence.

Dated: Dated: June 1, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–14900 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6995–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Epoxy Resins and Non-Nylon Polyamide Resin, Subpart W

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Epoxy Resins and Non-nylon Polyamide Production—Subpart W, OMB Control Number 2060–0290, expiration date 09/30/01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 13, 2001.

ADDRESSES: Send comments referencing EPA ICR No. 1681.04 and OMB Control No. 2060–0290, to the following addressees: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa..gov/icr, and refer to EPA ICR

No.1681.04. For technical questions about the ICR contact Sally Sasnett, (202) 564–7074 or by E-mail at sasnett.sally@epa.gov.

SUPPLEMENTARY INFORMATION: *Title:* NESHAP for Epoxy Resin and Non-nylon Polyamide Resin Production, Subpart W, OMB Control No. 2060–0290; EPA ICR No. 1681.04, expiring September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: The ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 63, subpart W, regulating hazardous air pollutants from process vents, storage vessels, wastewater systems and equipment leaks. The standards require mandatory record keeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control technology is being properly applied. Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs epichlorohydrin, and in lesser amounts, hydrochloric acid and methanol. In the Administrator's judgment, hazardous air pollutant emissions in this industry cause or contribute to air pollution that may be reasonably expected to endanger public health or welfare. Respondents are owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin. Source categories include basic liquid epoxy resin (BLR) producers and producers of epichlorohydrin-modified non-nylon polyamide resins, also known as wet strength resins (WSR).

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2001, 66 FR 8593; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 156 hours per response. 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.

Respondents/Affected Entities: Owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin.

Estimated Number of Respondents: 13.

Frequency of Response: semiannually (some quarterly).

Estimated Total Annual Hour Burden: 4525 hours.

Estimated Total Annualized Capital and Operating Maintenance Cost Burden: $9,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1681.04 and OMB Control No. 2060–0290 in any correspondence.

Dated: June 1, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–14901 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00724; FRL–6787–6]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to an assessment of additional scientific information concerning StarLink™ corn. Members of the public may submit written comments for consideration by the SAP. In addition, EPA will provide an opportunity during the public meeting for the public to make brief oral remarks to the SAP. The procedures governing submission of written comments and the presentation of oral comments are described below. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on July 17 and July 18 from approximately 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP–00724 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy (7202C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. A meeting agenda and several background documents relevant to this meeting are now available. EPA's primary position, paper, and questions to the FIFRA SAP should be available as soon as possible, but no later than late June. In addition, the Agency expects to provide additional background documents as the material become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this meeting under docket control number OPP–00724. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00724 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the panel. The Agency encourages that written statements be submitted before the meeting to provide panel members the time necessary to consider and review the comments.

1. *By mail*. You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your request electronically by e-mail to: ''opp-docket@epa.gov.'' Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00724. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

On November 28, 2000, the FIFRA SAP met to review the potential allergenicity, sensitization, and dietary exposure to StarLink™ corn. The Panel concluded that based on the available information at that time, there was a medium likelihood that the Cry9C protein was a potential allergen. However, the Panel also concluded that ''while not conclusive, the likely levels of the Cry9C protein in the U.S. diet provide sufficient evidence of a low probability of allergenicity in the exposed population.'' The Panel recommended that certain additional information would be valuable to refining the risk assessment. The Panel recommended that the highest priority was for follow-up on those individuals who had claimed that they had suffered some type of allergic reaction after eating a corn product that might have contained StarLink™ corn and to determine if there were antibodies for Cry9C in the blood serum of these individuals.

The SAP also recommended collecting additional information to improve the estimate of the levels of Cry9C protein in the food supply.

The SAP will be meeting to assess additional scientific information concerning StarLink™ corn. The SAP will review EPA's paper on the possible presence of Cry9C protein in processed human foods from wet milling of corn, the work the United States Department of Agriculture and Aventis Crop Sciences have done to reduce the amount of StarLink™ corn going into the food supply, the scientific data in Aventis Crop Sciences petition for a tolerance for Cry9C protein of 20 parts per billion in corn grain, validation of new detection methods for Cry9C protein in finished foods, and the Food and Drug Administration and Centers for Disease Control and Prevention's efforts to develop a test method for blood serum from individuals who reported having allergic type responses after eating foods containing corn.

B. Panel Report

The Panel will prepare a report of its recommendations to the Agency. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: June 4, 2001.

Vanessa Vu,

Director, Office of Science Coordination and Policy.

[FR Doc. 01–14905 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6995–6]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on June 28 and 29, 2001. The meeting will take place 1200 Pennsylvania Ave., NW., Washington, DC from 9:00 am to 5:00 pm on Thursday, June 28th and Friday, June 29th. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or call (202) 564–0453.

Dated: May 30, 2001.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 01–14903 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30511; FRL–6783–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30511, must be received on or before July 13, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30511 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Product Manager (PM) listed in the table below:

Product Manager	Telephone number/e-mail address	Mailing address	File symbol
Bob Brennis (PM 32)	(703) 308–6264; brennis.robert@epa.gov	Office of Pesticide Programs, Antimicrobial Division (7510C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.	1448-GIU; 8622-LI and 8622-LO; 71654-E and 71654-R
Velma Noble (PM 31)	(703) 308–6233; noble.velma@epa.gov	Do.	6836-EIG and 6836-EIU; 73696-E and 73696-R
Marshall Swindell (PM 33)	(703) 308–6341; swindell.marshall@epa.gov	Do.	224-GE; 59825-E, 59825-G, 59825-R, and 59825-U; 72674-E, 72674-G, and 72674-EG

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to

the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30511. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30511 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30511. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File symbol*: 59825–E. *Applicant*: Warwick International, Ltd., Mostyn, Holywell, Flintshire CH8 9HE, UK. *Product name*: Mykon ASD. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Tetraacetyl ethylenediame at 85%. *Proposed use*: For use in the manufacture of antimicrobial pesticide products used in cooling towers, pulp and paper mill slimicides, hard surface disinfectants, institutional laundry detergents, food contact sanitizers, and ware-washing machines. This proposed use also applies to file symbols: 59825–G, 59825–R, and 59825–U.

2. *File symbol*: 59825–G. *Applicant*: Warwick International, Ltd. *Product name*: CX 1071. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Tetraacetyl ethylenediame at 80%.

3. *File symbol*: 59825–R. *Applicant*: Warwick International, Ltd. *Product name*: Mykon/AML. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Tetraacetyl ethylenediame at 92%.

4. *File symbol*: 59825–U. *Applicant*: Warwick International, Ltd. *Product name*: CX 1078. *Type of Product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Tetraacetyl ethylenediame at 70%.

5. *File symbol*: 224–GE. *Applicant*: Phillips 66 Company, Aviation Operations Director, 697 Adams Building, Bartlesville, OK 74004. *Product name*: Phillips Fuel Additive 56MB. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: Diethylene glycol monomethyl ether at 99.7%. *Proposed use*: Fuel additive for bacterial and fungi control.

6. *File symbol*: 73696–E. *Applicant*: Alistagen Corporation, 601 West 50th St., New York, NY 10019. *Product name*: Hydrated Lime. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Calcium hydroxide at 100%. *Proposed use*: For controlling growth of gram negative and gram positive bacteria, viruses, fungi, mold/mildew, and algae on hard, non-porous

interior and exterior surfaces in institutional and commercial settings. This proposed use also applies to file symbol: 73696–R.

7. *File symbol*: 73696–R. *Applicant*: Alistagen Corporation. *Product name*: BNA W–2. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Calcium hydroxide at 18.7%.

8. *File symbol*: 1448–GIU. *Applicant*: Buckman Laboratories, Inc., 1256 N. McLean Blvd., Memphis, TN 38108. *Product name*: Busan 1157. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: 1,2-Ethanediamine, polymer with (chloromethyl) oxirane and *N*-methylmethanamine. *Proposed uses*: For controlling growth of algae and bacteria in swimming pools, heated swimming pools, exterior whirlpools, and hot baths, and for controlling algae, bacteria, and mollusks in cooling water and industrial process water systems, and to inhibit the growth of bacteria that cause degradation of cutting fluids.

9. *File symbol*: 72674–E. *Applicant*: Avecia, Inc., 1405 Foulk Road, P.O. Box 15457, Wilmington, DE 19850–5457. *Product name*: Dolphin Fungicide. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: *N*-butyl-1,2-benzisothiazolin-3-one at 97.8%. *Proposed use*: Preservation of plastics from antimicrobial deterioration. This proposed use also applies to file symbols: 72674–G and 72674–EG.

10. *File symbol*: 72674–G. *Applicant*: Avecia, Inc. *Product name*: Dolphin DOP. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides *Active ingredient*: *N*-butyl-1,2-benzisothiazolin-3-one at 9.5%.

11. *File symbols*: 72674–EG. *Applicant*: Avecia, Inc. *Product name*: Vanquish Technical. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: *N*-butyl-1,2-benzisothiazolin-3-one at 97.8%.

12. *File symbol*: 71654–R. *Applicant*: E.I. DuPont De Nemours, Inc. - Belle Plant, 901 W. DuPont Avenue, Belle, WV 25015. *Product name*: Glycolic Acid. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Glycolic acid at 70%. *Proposed use*: Toilet bowl sanitizer.

13. *File symbol*: 71654–E. *Applicant*: E.I. DuPont De Nemours, Inc. *Product name*: Dupont Organic Bowl Cleaner. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: Glycolic acid at 13.6%. *Proposed use*: Toilet bowl sanitizer.

14. *File symbol*: 6836–EIG. *Applicant*: Lonza Inc., 17–17 Route 208, Fair Lawn, NJ 07410. *Product name*: Lonzabac12. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Bis (3-aminopropyl) dodecylamine at 90%. *Proposed use*: Manufacturing use product for formulation of antimicrobials.

15. *File symbol*: 6836–EIU. *Applicant*: Lonza Inc. *Product name*: Lonza Formulation LNZ–64. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: Bis (3-aminopropyl) dodecylamine at 2.3%. *Proposed use*: Disinfectant for industrial and institutional use and biocide for recirculating cooling towers.

16. *File symbol*: 8622–LI. *Applicant*: Ameribrom, Inc., 2115 Linwood Avenue, Fort Lee, NJ 07024. *Product name*: Fuzzicide. *Type of product*: Antimicrobial end use pesticide. *Active ingredient*: Ammonium bromide at 99%. *Proposed use*: Bactericide, slimicide, algaecide for treating waters used in recirculating cooling towers, and pulp/paper mill systems. This proposed use also applies to file symbol: 8622–LO.

17. *File symbol*: 8622–LO. *Applicant*: Ameribrom, Inc. *Product name*: Ammonium bromide. *Type of product*: Manufacturing use product for formulating antimicrobial pesticides. *Active ingredient*: Ammonium bromide at 99%.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 24, 2001.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 01–14484 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, June 19, 2001 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, June 21, 2001 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2001–08: Senator Arlen Specter.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–15071 Filed 6–11–01; 2:58 pm]

BILLING CODE 6715–01–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.: 011305–010.

Title: United Alliance Agreement.

Parties: Hanjin Shipping Co., Ltd., Senator Lines GmbH, United Arab Shipping Co.

Synopsis: The proposed agreement modification revises United Arab Shipping's participation and space allocations under the agreement.

Agreement No.: 011657–005.

Title: Zim/Italia-Space Charter Agreement.

Parties: Italia Di Navigazione, S.p.A., Zim Israel Navigation Co., Ltd.

Synopsis: The proposed modification changes the geographic scope of the agreement by eliminating application to service between U.S. East Coast ports and ports in Colombia, France, Greece, Italy and Spain.

Agreement No.: 011767.

Title: Zim/Italia U.S. East Coast Vessel Sharing Agreement.

Parties: Italia Di Navigazione, S.p.A., Zim Israel Navigation Co., Ltd.

Synopsis: The proposed agreement establishes a vessel-sharing arrangement

between the parties in the trade between U.S. East Coast ports and ports in France, Greece, Italy and Spain.

Agreement No.: 011768.

Title: Interocean Lines/Auto Marine Space Charter Agreement.

Parties: Interocean Lines, Auto Marine Line.

Synopsis: The proposed agreement establishes a vessel-sharing agreement in the trade between Atlantic Coast ports of Florida and ports in the Dominican Republic.

Dated: June 8, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–14917 Filed 6–12–01; 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: 692F.
Name: A.R. Savage & Son, Inc. and Its Division Transoceanic Freighting Services.
Address: 1803 Eastport Drive, Tampa, FL 33605.
Date Revoked: May 4, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4088F.
Name: Able Freight Services, Inc.
Address: 801 W. Hyde Park Blvd., Inglewood, CA 90302.
Date Revoked: May 10, 2001.
Reason: Failed to maintain a valid bond.

License Number: 1980F.
Name: Almar International Forwarders, Inc.
Address: 10400 NW 21st Street, Miami, FL 33172.
Date Revoked: April 25, 2001.
Reason: Surrendered license voluntarily.

License Number: 14738N.
Name: Atlas Container, Inc.
Address: 8915 S. La Cienega Blvd., Unit E, Inglewood, CA 90301.
Date Revoked: April 29, 2001.
Reason: Failed to maintain a valid bond.

License Number: 10520N.
Name: British Motors of California d/b/a A.F.L. International.
Address: 6950 Camino Maquiladora, Suite D, San Diego, CA 91254.
Date Revoked: April 15, 2001.
Reason: Failed to maintain a valid bond.

License Number: 65F.
Name: Chase, Leavitt (Customhouse Brokers), Inc.
Address: 10 Dana Street, Portland, ME 04112.
Date Revoked: March 23, 2001.
Reason: Failed to maintain a valid bond.

License Number: 1732F.
Name: Don Hancock Co., Inc.
Address: 2423 Greens Road, Suite 2–B, Houston, TX 77032.
Date Revoked: April 27, 2001.
Reason: Failed to maintain a valid bond.

License Number: 2878F.
Name: Hiroyuki Wada d/b/a Amex Transworld Company.
Address: 8622 Bellanca #K, Los Angeles, CA 90045.
Date Revoked: May 10, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4390F.
Name: International Financial Resources, Inc.
Address: 510 Plaza Drive, Suite 2280, Atlanta, GA 30349.
Date Revoked: May 4, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3790F.
Name: Jorge H. Vasquez d/b/a Pacific King.
Address: 22600 South Bonita Street, Carson, CA 90745.
Date Revoked: April 25, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4204F.
Name: Kota Shipping Corp.
Address: 4995 N.W. 72nd Avenue, Suite 408, Miami, FL 33166.
Date Revoked: April 5, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3964N.
Name: Logistic Excel Corporation.
Address: 1521 West Magnolia, Suite B, Burbank, CA 91506.
Date Revoked: April 27, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4329F.
Name: Ronny Gene Mollard d/b/a GFAST.
Address: 5619 Hazen Street, Houston, TX 77081.
Date Revoked: May 3, 2001.
Reason: Failed to maintain a valid bond.

License Number: 10853N.
Name: Senko Logistics Company, Inc. d/b/a Senko Container Line d/b/a Senko Logistics (USA), Inc.
Address: 19550 Pacific Hgwy, Suite 107, Seattle, WA 98188.
Date Revoked: April 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3896N.
Name: Sino Am Cargo, Inc.
Address: 1335 Evans Avenue, San Francisco, CA 94124.
Date Revoked: April 4, 2001.
Reason: Failed to maintain a valid bond.

License Number: 972F.
Name: Stone & Downer Company.
Address: 140 Eastern Avenue, Chelsea, MA 02150.
Date Revoked: May 22, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16345N.
Name: Twin Modal, Inc.
Address: 2621 Fairview Avenue, N. Roseville, MN 55113–2616.
Date Revoked: March 29, 2001.
Reason: Surrendered license voluntarily.

License Number: 13930NF.
Name: Victoria Line, Inc.
Address: 10400 N.W. 21st Street, Miami, FL 33172.
Date Revoked: April 25, 2001.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–14918 Filed 6–12–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Seahawk Logitech, Inc., 175 Armstrong Road, Des Plaines, IL 60018, Officer: Kyung H. Kim, President (Qualifying Individual)

National Shipping Lines, Inc., 7424 Villareal Drive, Castro Valley, CA 94552, Officers: Jerry He, Chief Operation Officer (Qualifying Individual), Laurence Tam, Director

Fasttrack Line, Inc., 201 Sevilla Avenue, Suite 306, Coral Gables, FL 33134, Officer: Ernesto Del Riego, President (Qualifying Individual)

Grace Cargo, Inc., 648 Marsat Court, Suite B, Chula Vista, CA 91911, Officers: Eulogio M. Demonteverde, Jr., V. P. Operations (Qualifying Individual), Cyrus T. Santamaria, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Klasman-Varnak USA, Inc., 45 Tamarack Circle, Skillman, NJ 08558, Officers: Nejat Denizli, Vice President (Qualifying Individual), Yilmaz Nalcakar, President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Worldwide Forwarding, Inc., 4605 Marion Street, North Little Rock, AR 72118, Officers: Nancy Hester, President (Qualifying Individual), Carolyn Landrum, Secretary

Dated: June 8, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–14919 Filed 6–12–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Kensington Bankshares, Inc., Spring Hill, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Kensington Bank, Spring Hill, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Landmark Bancshares, Inc., (Landmark Merger Company), Manhattan, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of, and thereby merge with MNB Bancshares, Inc., Manhattan, Kansas, and Security National Bank, Manhattan, Kansas.

In connection with this application, Applicant also has applied to acquire Landmark Bancshares, Inc., Dodge City, Kansas, and thereby indirectly acquire Landmark Federal Savings Bank, Dodge City, Kansas, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–14825 Filed 6–12–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Quad City Holdings, Inc., Moline, Illinois; to acquire 100 percent of the voting shares of Cedar Rapids Bank and Trust Company (in organization), Cedar Rapids, Iowa.

Board of Governors of the Federal Reserve System, June 8, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–14890 Filed 6–12–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request; Extension and Revision of a Currently Approved Information Collection

AGENCY: Administration on Aging.

ACTION: Notice of revision and request for comments.

SUMMARY: The Administration on Aging is announcing an opportunity for public comment on the proposed request for an extension and revision to the currently approved information collection, as required by the Paperwork Reduction Act of 1995. This notice solicits comments on the requirements relating to the submission, by AoA grantees, of semiannual financial reports on all Title III grants. The information contained in the OMB 269 and its supplemental forms are reports currently being collected concurrently.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form to the Financial Status Report for all AoA Title III Grantees OMB control number 0985–0004.

Description: Supplemental form to the Financial Status Report provide an understanding of how projects funds by the Older American Act are being administered by grantees, in conformance with legislative requirements, pertinent federal regulations, and other applicable instructions and guidelines issues by the Administration on Aging (AoA). This information will be used for federal oversight of Title III Projects.

Respondents: State Agencies on Aging.

Number of Respondents: 56.

Average Number of Responses per Respondent: 2.

Average Burden Hours: 1 hour per State Agency.

Comments to Federal Register Notice Published January 29, 2001, Page 8113

Attached Additional Information: Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Office of Regulatory Affairs, Attn: Allison Herron Eydt, OMB Desk Officer, Room 10325, Washington, DC, 20503.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

Attachments: National Family Caregiver Support Program Data Collection Form, Respondents Comments and Standard Form 269 Instructions and Forms.

Comments to Federal Register Notice Published January 29, 2001, page 8113 and Consultation

AoA received 15 comments in response to its Federal Register announcement in connection with this request for OMB approval for the use of the Supplementary Statement to the SF 269. A matrix summarizing the issues addressed in these comments is available upon request, along with the actual letters and an updated version of the Supplemental Form, which eliminates the collection of Part E Statewide Expenditures for the National Family Caregiver Support Program. AoA's response to the issues raised by the respondents has been included below.

The Administration on Aging (AoA), in accordance with the Paperwork Reduction Act of 1965, requested approval from the Office of Management and Budget for an extension and revision to the currently approved AoA supplemental forms to the SF 269 to include a data collection requirement for the new Title III–E of the Older Americans Act (OAA), as amended in 2000.

The OAA, which was reauthorized on November 13, 2000, included an important new program, the National Family Caregiver Support Program (NFCSP). This program will help hundreds of thousands of family members who are struggling to care for their loved ones who are ill or have disabilities. The NFCSP is authorized at $125 million for grants to State agencies on aging in FY 2001. State agencies on aging, working with area agencies on aging and community and service provider organizations, will provide support services, including information and assistance to caregivers, counseling, support groups, respite and other home- and community-based services to families caring for frail older members. This program also recognizes the needs of grandparents who are caregivers of grandchildren, and other older individuals who are relative caregivers of children who are eighteen and under. Focusing on services for the caregiver rather than the care recipient is a shift for the OAA.

In order to get preliminary information that is necessary to collect on an interim basis that would document the need for a comprehensive caregiver delivery system, AoA proposed that states report expenditures, units of service, and people served (caregivers) for the following categories of service.

- Information
- Assistance
- Counseling, support groups and training
- Respite
- Supplemental services

This data would be sent to the AoA on a semi-annual basis.

AoA received 15 comments in response to the January 19, 2001 **Federal Register** announcement. The comments can be grouped into five categories: program income, performance measures, service definitions, client profile, use of SF 269, expenditure data and frequency of reporting (see attached summary table).

Specific comments included the following:

- Asked if cost sharing fees collected under the NFCSP could be used as match for the program;
- Suggested delaying the implementation barring the use of voluntary contributions as match;
- Recommended formal regulations process should be used to amend matching requirements and that states should be given ample time to make transition;
- Agreed (one respondent) with proposed changes to use of voluntary contributions as match;
- Concerned about lack of guidance on performance measures;
- Recommends collecting more useful information to meet the requirement to evaluate the effectiveness of the program;
- Concerned that service definitions have not been provided;
- Provided recommendations for some of the service definitions;
- Requested clarity on the target population—caregiver or care recipient;
- Concerned about lack of a uniform system for collecting information on people served;
- Concerned about reporting service data on SF 269;
- Recommended data be collected on a separate form until the NAPIS can be revised; and
- Indicated that using the SR 269 was administratively burdensome and duplicative of the NAPIS reporting.

Based on the comments received from the 15 respondents, the AoA proposes to amend its proposal published in the **Federal Register**, Vol. 66, No. 9 issued on Monday January 29, 2001 in two specific ways:

(1) on an interim basis, have a separate collection for the NFCSP; and

(2) reiterate the rationale for the remaining changes, which relate specifically to the recommendation of the Inspector General on grantees' use of and reporting for voluntary contributions.

Relative to the NFCSP, we propose to collect expenditure data, units of service and number of people served for the five categories of service (information, assistance, counseling, support groups and training, respite and supplemental services) as a temporary separate stand-alone report that can be sent to AoA once a year instead of bi-annually as required for the Supplemental to the SF 269. To facilitate submission of this

data, AOA will provide states an electronic copy of the National Family Caregiver Support Program data collection form, hereafter referred to as the NFCSP data form, whose contents will be exactly the same as that previously contained in the addendum which had been proposed for inclusion on the SF 269 Supplement to collect Part E data. The NFCSP data form can be completed and returned to AOA at the same time all other program performance data is due.

We believe that this change addresses the concerns raised by the comments submitted in response to the **Federal Register** announcement. Because our decision to decouple the report from the Supplement to the SF 269 is responsive to these comments, we do not believe this change requires a new 60-day comment period. Additionally, this temporary reporting procedure will provide AoA with the opportunity to have more in-depth consultations with the aging network about how to incorporate the new requirements associated with Title III–E into the on-going data collection system.

With regard to reporting for voluntary contributions, in a report entitled, States Use of Voluntary Contributions Under Title III of the Older Americans Act (A–12–00–00002), the OIG recommended that AoA ''submit revised regulations to make clear that voluntary contributions cannot be used as cost sharing or matching, but must instead be used to expand services.''

In our response, AoA agreed that the current regulations at 45 CFR 1321.67(b) and 1321.73 are inconsistent with section 307(a)(13)(C)(ii) of the Older Americans Act (OAA), as amended through December 31,1992. To be more specific, 45 CFR 1321.67(b) stipulated that the ''contributions from supportive services and nutrition services be used to expand supportive services and nutrition services respectively'' and 45 CFR 1321.73 required that ''grant related income be used either in the matching or cost sharing alternative in 45 CFR 92.25(g)(2), or the additive alternative 45 CFR 92.25(g)(3) or a combination of the two.''

With the enactment of the FY 2000 amendments to the OAA, however, section 307(a)(13)(C)(ii) was replaced with the new section 315 (b)(4)(E). The new section requires area agencies on aging to ensure that service providers ''use all collected contributions to expand the services for which the contributions were given.'' This change, in our view, negated the need for revising the regulations relating to the former section, as it supercedes the previous language that was interpreted in the aforementioned regulations. The new statutory language is clear on its face. Regulatory language for the new statute as a whole, however, is in the process of being developed and as such will encompass the specific changes required for section 315 (b)(4)(E), thus negating the need for a separate regulation to announce the section changes.

AoA did, however, outline the following actions taken in the interim to inform states that voluntary contributions may not be used for cost sharing or matching and that voluntary contributions and any related interest earned are program income and must be used to expand services:

a. AoA regional administrators have provided the OIG report to the State Units on Aging so that the states may begin to make changes consistent with OIG recommendations.

b. AoA has revised the instructions for completing the supplemental statement to the SF 269 Financial Status Report to clarify that voluntary contributions are not to be reported as having fulfilled the state cost sharing or match requirements. (We also informed the OIG that the revised form was in the final stages of the OMB Paperwork Reduction Clearance Process, as addressed by this process.)

c. A Program Instruction will be prepared to accompany the revised form when it is implemented.

d. Revised instructions to the AoA Regional Offices and the Division of Grants Management for the review of the revised form are being prepared.

The remainder of the changes incorporated into the form were made to bring us into compliance with the Inspector General recommendations and statutory requirements.

NATIONAL FAMILY CAREGIVER SUPPORT PROGRAM DATA COLLECTION FORM

[Part E (Statewide expenditures)]

	Expenditures	Units	People served
Information	$		
Assistance	$		
Counseling support groups training	$		
Respite	$		
Supplement services	$		
Total	$		

The Administration on Aging (AoA)

Additional Instructions for Completing Financial Status Report and Supplemental Form to SF–269

General Instructions

(1) All amounts reported should be rounded off to the nearest dollar; no cents should be reported.

(2) Leave blank items 10.c and 10.g since the Deductive and the Matching or Cost Sharing alternatives are not allowed.

(3) The amount reported in item 10.e should represent non-State, subrecipient contributions (i.e. those non-Federal resources contributed by AAA's, nutrition and service providers, etc.).

(4) The amount reported in item 10.h should represent those outlays made from State resources.

(5) Item 10.k should include the total Federal and State share of unliquidated obligations. These would include State funds awarded to AAA's, etc. which have not been earned/expended.

(6) Item 10.1, the State's share from 10.k above.

(7) Please note that program income used in accordance with the Additional Alternative (Item 10.r) is a CUMULATIVE AMOUNT and should not be included in the total outlays on line 10.a.

Since the current form does not have multiple columns for reporting more than one program function, State Agencies are required to break down the following items on the Supplemental Form to the SF 269.

ITEM 10.i Total recipient share of outlays.

Sections 304 and 308 of the Older Americans Act and Section 1321.47 of the Title III regulations require a match of 25 percent for State and Area Plan and 15 percent for all services. Breakdown Item 10.i, Column III, to

identify the total Non-Federal amount expended for State and Area Plan Administration.

ITEM 10.o Total Federal funds authorized for this funding period.

The break down of Item 10.o should be the State's allocation of Federal funds for the following five (5) program functions:

1. State Administration/ Administrative Activities.

Sections 308(a)(1) and (b)(2) provide the authority for States to expend the greatest of 5% of their total allotment or $500,000 for this function. Provide the total amount of Title III funds used for State Administration. This total must be broken down further to identify the amount of funds utilized from each program allotment.

2. Part B, Supportive Services, Part C1, Congregate Meals and Part C2, Home Delivered Meals

Sections 308(b)(4) and (5) provide the authority for States to transfer between Subparts C1 and C2 and between Parts B and C. Provide the amount utilized by the State after transfers for each of the three program allotments.

3. Long-Term Care Ombudsman.

Sections 304(d)(1)(B) and 307(a)(9) provides the authority to utilize Part B funds for Long-Term Care Ombudsman services. Provide the amount of Fiscal Year 2000, Title III–B funds utilized by the State for costs incurred by the State Agency in support of the Statewide Long-Term Care Ombudsman program. This amount should be excluded from Part B amount in item 2 above.

4. Part D, Disease Prevention and Health Promotion Services

Section 303(d) authorizes funds for grants under Part D. Provide the amount of Title III funds utilized for preventive health services.

5. Part E, National Family Caregiver Support Program

Sections 303(e)(1) and (2) authorizes funds for grants under Part E. Provide the amount of Title III funds utilized for caregiver services. Also provide statewide expenditures by service categories.

6. Area Plan Administration

Sections 304(d)(1)(A) and 308(a)(3) provide the authority for States to utilize a maximum of 10% of their total allotment for Area Plan Administration. This total must be broken down further to identify amount of funds utilized from each program allotment.

FINANCIAL STATUS REPORT AOA SUPPLEMENTAL FORM TO SF–269–TITLE III

STATE _____ ..... FY _____
DATE SUBMITTED _____ ..... REPORTING PERIOD ENDED _____

Item 10 i Column III, Total Recipient Share of Outlays which consist of outlays from:

	State	AAAs
ADMIN	$_____	$_____
Title III		
Part B	$_____	$_____
LTCO (Part B)	$_____	$_____
Part C–1	$_____	$_____
Part C–2	$_____	$_____
Part D	$_____	$_____
Part E	$_____	$_____
Total	$_____	$_____

Item 10 j Column III, Federal Share of Net Outlays:

	State	AAAs
ADMIN	$_____	$_____
Title III		
Part B	$_____	$_____
LTCO (Part B)	$_____	$_____
Part C–1	$_____	$_____
Part C–2	$_____	$_____
Part D	$_____	$_____
Part E	$_____	$_____
Total	$_____	$_____

Item 10 o Column III Total Federal Funds Authorized by AOA for the Federal FY _____ have been allocated by the State as follows (as applicable):

1. State administrative activities which consists of funds in the amount of $_____ from the following:

Part B	$_____	
Part C–1	$_____	
Part C–2	$_____	
Part D	$_____	
Part E	$_____	
2. Part B, Supportive Services	$_____	
3. Part B, Long Term Care Ombudsman	$_____	FY 2000 $_____
4. Part C–1, Congregate Meals	$_____	
5. Part C–2, Home Delivered Meals	$_____	
6. Part D, Preventive Health	$_____	
7. Part E, Caregivers	$_____	
Area Plan Administration which consists of funds from:		
Part B	$_____	
Part C–1	$_____	
Part C–2	$_____	
Part E	$_____	

Item 10 p Column III, Unobligated Funds:

Part B	$_____	Part D $_____
Part C–1	$_____	Part E $_____
Part C–2	$_____	

FINANCIAL STATUS REPORT AOA SUPPLEMENTAL FORM TO SF–269–TITLE III—Continued

Item 10 r Column III, Disbursed Program Income using the additional alternative (cumulative amount):

Part B	$_____	Part D	$_____
Part C–1	$_____	Part E	$_____
Part C–2	$_____		

[FR Doc. 01–14879 Filed 6–12–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–47]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Human Exposure to Cyanobacterial (blue-green algal) Toxins in Drinking Water: Risk of Exposure to Microcystin from Public Water Systems—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, there have been few epidemiologic studies of this association. We plan to recruit 100 people whose tap water comes from a source with a current cyanobacteria bloom (i.e., *M. aeruginosa*) and who report drinking unfiltered tap water. We also plan to recruit 100 people who report drinking unfiltered tap water but whose tap water source is groundwater that has not been contaminated with cyanobacteria. This population will serve as our referent population for the analysis of microcystins in blood and for the clinical assays. We will administer a questionnaire and collect blood samples from all study participants. Blood samples will be analyzed using a newly developed molecular assay for levels of microcystins—the hepatotoxin produced by *Micocystis aeruginosa*. We also will analyze blood samples for levels of liver enzymes (a biological marker of hepatotoxicity) and for a number of clinical parameters including hepatitis infection (a potential confounder in our study). We will evaluate whether we can (1) detect low levels of microcystins (<10 ng/ml of blood), in the blood of people who are exposed to very low levels of this toxin in their drinking water, (2) utilize clinical endpoints such as blood liver enzyme levels as biomarkers of exposure and biological effect, and (3) compare the analytical results for the exposed population with the results from the referent population. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Telephone Contact	300	1	10/60	50
Interview	200	1	1	200
Blood Samples Collection	200	1	20/60	67
Tap Water Sample Collection	200	1	30/60	100
Total				417

Dated: June 4, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–14822 Filed 6–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01133]

National Programs to Support Healthy Aging; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for ''National Programs to Support Healthy Aging''. This program addresses the ''Healthy People 2010'' focus areas of Access to Quality Health Services, Educational and Community Based Programs, and Physical Activity and Fitness.

The purpose of the program is to establish national partnerships to enhance health and quality of life for older adults through a broad national strategy to: (1) Promote oral, physical, and mental health and healthy behaviors and practices, (2) reduce the impact of injuries and chronic diseases, and (3) maintain function and independence for older Americans.

This program consists of four parts. Furthermore, Parts I, II, and IV have additional Special Emphasis Areas. To qualify for funding under a Special Emphasis Area, the applicant must apply and be approved for funding under the respective part (i.e., Part I, II, or IV).

Part I—to strengthen and enhance collaborations between health departments at the state and local level and community organizations/networks that focus on older adults to promote behaviors and practices that lead to improved oral, physical, and mental health and more fulfilling and satisfying lives.

Part I, Special Emphasis Area One—to expand activities that promote physical activity in older adults.

Part I, Special Emphasis Area Two—to expand activities that promote immunizations for older adults.

Part II—to strengthen the capacity of national, state, and/or local agencies to conduct and evaluate culturally-appropriate programs that improve oral, physical, and mental health, reduce the impact of injuries and chronic diseases, and maintain function and independence for older Americans.

Part II, Special Emphasis Area—to identify programmatic best practices in community-based health promotion and disease prevention.

Part III—to support a planning committee and conduct a workshop/conference to assess the public health impact of the aging of America's workforce.

Part IV—to develop consumer education tools and strategies to improve oral, physical, and mental health, reduce the impact of disease and injury, and delay disability and the need for long-term care among older adults, including those in minority and other under-served communities.

Part IV, Special Emphasis Area—to assess the knowledge and beliefs specific to falls, fall risks, driving safely, and driving cessation.

B. Eligible Applicants

Assistance will be provided only to private, not-for-profit 501(c)(3) national organizations whose mission is to serve the health and well-being of older Americans. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office.

Eligible applicants will be national voluntary organizations and must have established working relationships with affiliate offices or chapters or local, state, or regional membership constituencies in states and territories in order to provide nationwide geographical coverage for the dissemination of aging information and programs.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund the following categories:

Part I—Approximately $100,000 will be available to fund one award.

Part I, Special Emphasis Area One—Approximately $50,000 will be available to fund one award.

Part I, Special Emphasis Area Two—Approximately $50,000 will be available to fund one award.

Part II—Approximately $50,000 will be available to fund one award.

Part II, Special Emphasis Area—Approximately $50,000 will be available to fund one award.

Part III—Approximately $50,000 will be available to fund one award.

Part IV—Approximately $100,000 will be available to fund one award.

Part IV, Special Emphasis Area—Approximately $50,000 is available to fund one award.

It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

The applicant should propose activities in one or more of the following four areas:

Part I—Develop mechanisms to:

a. Provide resources to health departments at the state and local level and community organizations/networks that focus on older adults to promote healthy behaviors and practices;

b. Develop communications resources for use by community organizations and older adults, including but not limited to information, materials and toolkits;

c. Develop tools to help communities inventory and publicize their resources; and

d. Integrate health plans and other health care resources into community demonstration projects.

Part I, Special Emphasis Area One:

Develop mechanisms described above that:

a. Focus on promotion of physical activity in older adults;

b. Promote active community environments that allow people in all ranges of abilities to have opportunities for safe and active travel and recreation (of particular importance is that communities be walkable and bikable);

c. Help agencies improve communications with older adults about physical activity;

d. Assist communities in improving the walkability of their built environment; and

e. Promote inter-generational programs.

Part I, Special Emphasis Area Two:

Develop mechanisms described above that:

a. Focus on promotion of immunizations in older adults;

b. Help agencies enhance awareness of the importance of immunizations for older adults; and

c. Link health care services funded under Medicare to community agencies and services.

Part II—Strengthen the capacity of national, state, and/or local agencies to conduct and evaluate the objectives of this part by:

a. Identifying innovative health and supportive programs for older adults;

b. Conducting systematic review and synthesis of quality programs including organizational capacity, resource requirements and outcomes achieved; and

c. Disseminating findings.

Part II, Special Emphasis Area—Identify and assess community-based health promotion and disease prevention programs by:

a. Assessing the quality of evaluation used for these programs; and

b. Compiling a ''best practices'' document suitable for use by national, state and local agencies.

Part III—Review and synthesize available information about:

a. Demographic trends of America's workforce;

b. Occupations that are expected to have the highest concentration of older workers;

c. Physiological, cognitive, and career changes that typically occur with aging;

d. Barriers encountered by older workers;

e. Occupational health and safety experience of older workers and the implications of this information for creating a healthier workplace for older workers;

f. Attempts to modify the work environment for older workers; and

g. Information gaps/needs.

Part IV—Assess consumer education tools and strategies by:

a. Conducting consumer research and marketing, e.g. focus groups, among older adults, including those from minority and other under-served communities; and

b. Developing recommendations and strategies for group-specific future interventions, educational messages, and programs according to the findings.

Part IV, Special Emphasis Area—Conduct consumer marketing that focuses on fall risks, fall injuries, prevention of falls, resources for assistance and information, e.g. medication review, home modification, exercise, vision, safe driving, decision-making about stopping driving due to age-related disability, resources for assistance and continued mobility, and self-efficacy in taking action.

2. CDC Activities

a. Collaborate in planning, implementing, and evaluating strategies and programs.

b. Assist in the analysis and interpretation of the evaluation phase of projects or programs.

c. Provide programmatic consultation and guidance in support of the program.

d. Assist in the planning and implementation of linkages with local and national aging organizations or agencies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applicant is required to submit an original and two copies of the application. The application, excluding appendices, should not exceed 20 pages. Pages should be clearly numbered and a complete index to the application and any appendices should be included. The original and each copy of the application should be submitted unstapled and unbound. All materials should be typewritten, double-spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only.

Applicants may apply for support under one or more of the four parts. Only one set of application forms should be submitted. However, for each part and special emphasis area, the applicant should include a separate and complete narrative, separate budget, and budget justification that can stand alone as an application for review purposes.

Application should be organized in the following sections.

1. Executive Summary

Provide a clear, concise, and objectively written statement of the major objectives and components of proposed activities, proposed time frame, and evaluation plan. Document your organization's national affiliate network including proof of your non-profit status.

2. Existing Resources and Needs Assessment

Describe the organizational capacity for the proposed activities. Describe relevant experience and expertise to perform the proposed activities.

3. Collaborative Relationships

Describe collaborative relationships with other agencies and organizations that will be involved in the proposed activities. Include letters of support and commitment by collaborators where appropriate.

4. Operational and Evaluation Plan

Describe the specific outcome and process objectives for each proposed project, the major steps required to achieve the objectives, and a projected timetable for completion that displays dates for the accomplishment of specific proposed activities. Describe how achievement of outcome and process objectives, and program effectiveness will be evaluated.

5. Management and Staffing Plan

Describe how the program will be effectively managed including:

a. Management structure including the lines of authority and plans for fiscal control.

b. Staff positions responsible for implementation of the program.

c. Qualifications and experience of the designated staff.

6. Budget and Justification

Provide a detailed budget request and line-item justification of all proposed operating expenses.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: http://forms.psc.gov.

On or before July 12, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private, metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Each application will be evaluated individually against the following

criteria by an independent review group.

1. Resources and Experience: (25 points)

The extent to which the applicant provides evidence of experience and expertise for the proposed projects.

2. Collaboration: (15 points)

The extent to which the applicant provides evidence of collaborative relationships with other agencies and organizations relevant to successful completion of the proposed projects.

3. Proposed Operational and Evaluation Plan: (35 points)

The extent to which the applicant:

a. Clearly identifies the specific outcome and process objectives for the proposed projects, and the major steps required to meet the objectives;

b. provides a realistic plan for collaboration with partners in the project; and

c. proposes an evaluation plan that is likely to provide meaningful information about the achievement of the project's objectives.

4. Proposed Implementation Schedule: (10 points)

The extent to which the projected timetable for completion of tasks and for meeting objectives is reasonable and realistic.

5. Project Management and Staffing Plan: (15 points)

The extent to which the applicant demonstrates management structure and staff positions with clear lines of authority and plans for fiscal control, and that designated staff have appropriate qualifications and experience.

6. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

7. Human Subjects: (Not Scored)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Semiannual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Should you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01133, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2754, Email: neal@cdc.gov.

For program technical assistance, contact: Mike Waller, Centers for Disease Control and Prevention, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway NE, Atlanta, GA, 30341–3717, Telephone: (770) 488–5264 Email: mnw1@cdc.gov.

Dated: June 7, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–14859 Filed 6–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01115]

National Comprehensive Cancer Control Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for cooperative agreement programs for ''National Comprehensive Cancer Control Program.'' This program addresses the ''Healthy People 2010'' focus area of Cancer.

The purpose of the National Comprehensive Cancer Control Program is to support States, Tribes, and Territories in the planning and implementation of comprehensive cancer control activities. See Appendix A for background information.

This announcement consists of two parts. Part I supports comprehensive cancer control planning activities. Part II supports comprehensive cancer control implementation activities.

B. Eligible Applicants

Assistance will be provided only to the health departments of States, the District of Columbia, and Territories, or their bona fide agents or instrumentalities (including the Commonwealth of Puerto Rico, The Virgin Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) and to Federally recognized Indian Tribal governments (including Indian Tribes, Tribal

organizations, Alaska Natives and Urban Indian organizations, and inter-tribal consortia, hereafter referred to as Tribes).

Applicants may apply for funding under Part I or Part II but not both parts.

Only one eligible application from a State, Tribe, or Territory will be funded. Applicants from each State, Tribe, or Territory are encouraged to coordinate and combine their efforts prior to submitting the application for their State/Tribe/Territory.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,900,000 is available in FY 2001 to fund approximately eight to twelve awards. It is expected that the awards will begin on or about September 30, 2001.

Part I—Comprehensive Cancer Control Planning

Approximately $750,000 is available in FY 2001 to fund approximately five to seven awards. It is expected that the average award will be $125,000; ranging from $100,000 to $150,000. It is expected that the awards will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Part II—Comprehensive Cancer Control Implementation

Approximately $1,150,000 is available in FY 2001 to fund approximately three to five awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that the awards will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Direct Assistance

You may request Federal personnel as direct assistance, in lieu of a portion of financial assistance.

2. Use of Funds

These funds should not be used to support other existing programs such as breast and cervical cancer, cancer registry, laboratory or clinical services, or tobacco control programs. Funds awarded under this program announcement may not be used to supplant existing program efforts. Funds may not be used to provide direct medical care or prevention case management.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

Part I—Comprehensive Cancer Control Planning Activities

1. Recipient Activities

a. Assess and address the State/Tribe/Territory cancer burden to determine the critical target areas for cancer prevention and control activities; assess gaps in strategies to address the cancer burden; create and prioritize measurable goals and objectives for a comprehensive cancer control plan; and identify implementing organizations for priority plan strategies.

b. Build linkages among existing State/Tribe/Territory-based surveillance systems (e.g., the statewide Central Cancer Registry), Surveillance, Epidemiology, and End Results, (SEER); vital statistics; other databases, including Behavioral Risk Factor Surveillance System (BRFSS); and other data agencies and sources to assist with assessing data/research gaps.

c. Mobilize support for comprehensive cancer control planning activities by assessing and building support among the public and private sectors.

d. Build partnerships by identifying, contacting and inviting potential key private, professional, voluntary, and nonprofit cancer control organizations, policymakers, consumers, payers, media, state and federal agencies, surveillance agencies, research and academic institutions, and others to become members of a new or existing State/Tribe/Territory-wide comprehensive cancer control coalition/partnership.

e. Enhance comprehensive cancer control infrastructure by acquiring key staff and associated resources to produce a State/Tribe/Territory-wide comprehensive cancer control plan.

f. Conduct systematic evaluation of the comprehensive cancer control planning process through identifying resources and staff for evaluation, defining planning evaluation questions, assessing the planning process, and identifying emerging challenges, solutions and outcomes of the planning process.

Part II—Comprehensive Cancer Control Implementation Activities

1. Recipient Activities

a. Implement priorities as established by the State/Tribe/Territory's comprehensive cancer control plan, which provides a framework for action to reduce the burden of cancer in the State/Tribe/Territory.

b. Update and modify strategies to assess and address the State/Tribe/Territory cancer burden, enabling continual identification of critical target areas for cancer prevention and control activities; assess gaps in existing strategies to address the cancer burden; and prioritize and identify implementing organizations for emerging priority plan strategies.

c. Enhance and build new linkages among existing State/Tribe/Territory-based surveillance systems (e.g., the statewide Central Cancer Registry), Surveillance, Epidemiology, and End Results (SEER); vital statistics, and other databases, including Behavioral Risk Factor Surveillance System (BRFSS) and other data agencies and sources to assist with assessing data/research gaps; and conduct additional data collection as feasible.

d. Mobilize support for cancer prevention and control activities by assessing, continuing, and building additional support (resources, political will, etc.) among the public and private sectors.

e. Build new and enhance existing partnerships by identifying, contacting and inviting potential key private, professional, voluntary, and nonprofit cancer control organizations, policymakers, consumers, payers, media, State and federal agencies, surveillance agencies, research and academic institutions, and others to become members of a new or existing State/Tribe/Territory-wide comprehensive cancer control coalition or partnership.

f. Enhance the organizational infrastructure by acquiring key staff and associated resources to coordinate and integrate cancer prevention and control efforts. This would include efforts to prioritize and support the implementation of cancer prevention and control activities.

g. Conduct systematic evaluation of the cancer control prioritization and implementation process. In addition to evaluating progress in meeting goals, process and impact objectives as stated in the implementation plan, programs should develop performance indicators to use as benchmarks for improvement and to determine the impact of a

comprehensive approach to cancer prevention and control.

h. Identify and secure resources to support the development and dissemination of programs that will contribute to the priority areas identified within the comprehensive cancer control plan. Support organizational and stakeholder participation in national cancer prevention, early detection, and control campaigns.

2. CDC Activities

a. Assist with the exchange of information and collaboration among recipients.

b. Provide to recipients relevant, state-of-the-art, research findings and public health recommendations related to comprehensive cancer control.

c. Provide ongoing guidance, consultation, and technical assistance in conducting Recipient Activities.

d. Assist with identifying and developing national cancer prevention and control campaigns and materials that can be integrated into comprehensive cancer control programs.

E. Content

Pre-application Conference Call

Pre-application conference calls are scheduled for June 25–26, 2001, at 1:00 p.m. Eastern Standard Time on each date. The purpose of the conference calls is to communicate the logistics of the application process and to respond to any questions regarding this Program Announcement. A summary of the questions and answers will be provided to all eligible applicants.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in developing your application. Applications should not exceed 30 double-spaced pages (no smaller than 10 point type) including budget and justification. Applicants should also submit appendices (including curriculum vitae, job descriptions, organizational charts, and any other supporting documentation), which should not exceed an additional 20 pages (20 page limit excludes State/Tribe/Territory cancer plan, if applicable). All materials must be provided in an unbound, one-sided, 8½ × 11″ print format, suitable for photocopying (i.e., no audiovisual materials, posters, tapes, etc.).

Direct Assistance

To request new direct-assistance assignees, include:

1. Number of assignees requested;
2. description of the position and proposed duties;
3. ability or inability to hire locally with financial assistance;
4. justification for request;
5. organizational chart and name of intended supervisor;
6. opportunities for training, education, and work experiences for assignees; and
7. description of assignee's access to computer equipment for communication with CDC (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

Applications should contain the following:

1. Executive Summary

The applicant should provide a clear, concise two-page written summary to include:

a. Need for comprehensive cancer control planning activities or implementation activities.

b. Identification of the major activities proposed to develop or implement a comprehensive cancer prevention and control plan.

c. Requested amount of federal funding.

d. Applicant's capability to conduct the comprehensive cancer control activities.

2. Background and Need

The applicant should describe:

a. The cancer disease burden for the State/Tribe/Territory, including the most recently available age-adjusted, overall cancer incidence and mortality rates by age, gender, and racial and ethnic groups. Cite the source for and time period covered by these data. Also describe the estimated State/Tribe/Territory cancer incidence and mortality rates for 2001.

b. Relevant experiences in development and implementation of cancer prevention and control programs.

c. Relevant experiences in coordination and collaboration between and among existing programs.

d. Existing initiatives, capacity, and infrastructure (e.g., coalitions/partnerships; surveillance activities and systems; evaluation activities; information, media and health communications; education and outreach strategies) within which comprehensive cancer control will occur.

e. Description of the need for comprehensive cancer control funding to enhance existing efforts.

3. Collaborative Partnerships and Community Involvement

The applicant should include:

a. A description of the proposed or existing broad-based State/Tribe/Territory-wide partnership that will advise and support the program in planning and/or implementing comprehensive cancer control activities, including a plan for identifying new/additional key members, their charge and proposed roles/responsibilities.

b. A description of evidence of a broad and diverse level of support for and commitment to comprehensive cancer control planning or implementation (e.g., legislation supporting cancer prevention and control, other sources of funding for comprehensive cancer control, dedicated comprehensive cancer control staff); letters of support (in a separate tabbed section of the application) that indicate the nature and extent of existing or planned collaborative support.

4. Management Plan

The applicant should:

a. Submit a management plan that includes a description of proposed management structure that addresses the use of qualified and diverse technical, program, administrative staff (including in-kind staff), organizational relationships (including lines of authority), internal and external communication systems, and a system for sound fiscal management. Minimal staffing should include a program coordinator. Applicant should clearly indicate who is responsible for ensuring that a comprehensive plan is developed and/or implemented.

b. Provide a description of the proposed or existing linkages within the State/Tribe/Territory health department (e.g., across risk factors, categorically funded programs, disciplines), that will support integration and coordination within the agency. The management structure description should include discussion of the integration and coordination of risk factor and cancer-related programs both within and outside of the funded organization and the integration of these programs in the planning or implementation effort. It is important that the management plan address how coordination and cooperation among existing categorical program efforts will be facilitated, while allowing each program to maintain individual integrity and identity.

c. Provide (in the appendices) a copy of the organizational chart indicating the placement of the proposed or existing program in a department or agency. The chart should clearly demonstrate internal linkages necessary for comprehensive cancer control planning or implementation and evaluation.

d. Provide a description of the proposed core planning or implementation team. The core team is traditionally made up of individuals both within and outside of the health agency that are committed to the development and implementation of the comprehensive cancer plan.

e. Provide (in the appendices) curriculum vitae and job descriptions of key staff to be partially or fully funded through this announcement, as well as any staff to be provided through in-kind support.

5. Budget With Justification

The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the Recipient Activities. If in-kind contributions are being provided by the applicant, these should be documented.

The annual budget should include funds for two staff members to make two, two-day trips to Atlanta for a reverse site visit.

Part I applicants should also provide the following: The applicant should provide a detailed workplan and time-line that describes how comprehensive cancer control planning activities will be conducted and will lead to the development of a comprehensive cancer control plan. A sample workplan template is included in Attachment I. Additional information regarding the workplan template is available at www.cdc.gov/cancer/nbccedp/training.

Part II applicants should also provide the following:

1. Comprehensive Cancer Control Plan

The applicant should:

a. Submit a copy of the (1) existing up-to-date State/Tribe/Territory-wide comprehensive cancer control plan, or (2) an up-to-date draft of a comprehensive cancer control plan. A comprehensive cancer control plan should include:

(1) An assessment of the cancer burden in the State/Tribe/Territory using population-based data;

(2) Short-and long-term goals and objectives to address cancer control issues based on identified needs;

(3) Proposed strategies to meet the objectives; and

(4) An assessment of existing and needed resources to implement the comprehensive cancer control plan.

b. Describe the process by which the plan was developed. If the plan is in draft format, describe the process for assuring readiness for implementation by November 1, 2001. Include a description of the participating organizations' involvement in the development of the plan. Clearly describe a mechanism to review, evaluate, and update the plan to meet changing needs.

c. Describe who will be responsible for maintaining the comprehensive cancer control plan, assuring that the partnership/coalition is involved throughout the process, and that comprehensive cancer control efforts proceed according to the State/Tribe/Territory's plan.

2. Implementation Plan

The applicant should include an implementation plan that:

a. Describes how the cancer control plan will be implemented, including the process for determining priorities to be addressed in implementing the comprehensive cancer control plan, the process for assuring that these decisions are data-or evidence-based and grounded in sound science, and the role of the coalition and/or collaborators in the priority setting process.

b. Includes specific, measurable, attainable, realistic and time-framed process and outcome objectives designed to achieve a coordinated and integrated approach to cancer prevention and control and address those priorities identified from the cancer plan. The implementation plan for this program announcement need not address each goal and objective in the comprehensive cancer control plan.

c. Provides a description of the strategies proposed to address the identified priority goals and objectives of the comprehensive cancer control plan. This should include discrete time frames, responsible agencies, organizations or organizational units, and activities proposed to meet the objectives or priorities within the comprehensive cancer control plan. It should also include a description of how the proposed activities will facilitate coordination and cooperation among existing categorical program efforts. The applicant should include goals for all four years, and specific objectives for year 01.

d. Describes how surveillance data will be integrated into program activities and used to assess program progress and inform program decision making. The description should include evidence that existing surveillance systems enable programs to: collect population-based information on the demographics, incidence, staging of cancer at diagnosis, morbidity and mortality from cancer; identify segments of the population who are at higher risk for incidence, morbidity, mortality; identify factors contributing to the disease burden; and, when appropriate, monitor the number and characteristics of people served by relevant programs.

e. Includes the current or proposed plan for evaluating

(1) the program's progress in meeting specific objectives outlined in the implementation plan, and

(2) overall success of the comprehensive cancer control effort, based on indicators established by the applicant. Baseline measures should be identified and assessed to allow for comparisons after implementation has begun. For each type of indicator that will be used, describe how data will be obtained, how information will be used to improve the overall program, who is responsible for each evaluation task, and a time-line for accomplishing each evaluation task.

f. Describes proposed information and education efforts. Identify the mechanisms through which information, material, and successful strategies will be consistently and systematically shared and disseminated throughout the State/Tribe/Territory. Include in this description a discussion of plans for collaborating with partners on national campaigns or education efforts.

g. Describe mechanisms for assuring that the core components of a comprehensive cancer control program, including primary cancer prevention/risk factor reduction, education/outreach, screening/diagnostic/treatment services, surveillance, and evaluation, are consistent with accepted science and prevailing standards of public health practice.

h. Describe existing programs funded by other sources that will be critical to the successful coordination and integration of the proposed comprehensive cancer control effort.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: http://www.cdc.gov/od/pgo/forminfo.htm.

On or before July 20, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Part I Comprehensive Cancer Control Planning Activities

1. Background and Need (10 points)

The extent of need based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, cancer program experience, existing capacity and infrastructure.

2. Collaborative Partnerships and Community Involvement (20 points)

The extent to which evidence is presented which demonstrates the breadth and appropriateness of both (a) existing linkages within and outside the State/Tribe/Territory health department to coordinate diverse cancer control activities, and (b) the current or proposed broad-based State/Tribe/Territory-wide coalition/partnership to advise and support comprehensive cancer control planning activities.

3. Management Plan (30 points)

The feasibility and clarity of the proposed management plan. The extent to which this plan addresses the use of qualified and diverse technical, program and administrative staff.

4. Workplan and Time-line (40 points)

The extent to which the workplan and time-line are feasible, appropriate, reasonable and provide a clear description of an evaluation component.

5. Budget with Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and applicant's implementation plan.

6. Human Subjects Protection (not scored)

The extent to which the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

Part II Comprehensive Cancer Control Implementation Activities

1. Background and Need (10 points)

The extent of need based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, cancer program experience, existing capacity and infrastructure.

2. Comprehensive Cancer Control Plan (20 points)

The quality of the comprehensive cancer control plan in terms of: an integrated and coordinated State/Tribe/Territory-wide approach to prevention, early detection, treatment, rehabilitation, and palliation of cancer; an assessment of State/Tribe/Territory cancer burden; short -and long-term goals, objectives, and strategies to address cancer control issues; an assessment of existing and needed resources to develop the comprehensive cancer control program; and the full range of cancer prevention and control activities (from primary prevention to palliation). The extent to which evidence is presented that indicates a broad range of partners and stakeholders were included throughout the process to develop, implement, review and update the plan as appropriate; mechanisms to review, evaluate and update the plan to meet evolving needs, and personnel who will be responsible for maintaining the plan.

3. Collaborative Partnerships and Community Involvement (15 points)

The extent to which evidence is presented which demonstrates the breadth and appropriateness of (a) existing linkages within and outside the State/Tribe/Territory health department to coordinate diverse cancer control activities, and (b) the current or proposed broad-based State/Tribe/Territory-wide coalition/partnership to advise and support comprehensive cancer control implementation activities.

4. Implementation Plan (35 points)

The extent to which the applicant's implementation plan describes the components described under Section E. Application Content, Part II, number 2, Implementation Plan, of this Program Announcement.

5. Management Plan (20 points)

The feasibility and clarity of the proposed management plan. The extent to which this plan addresses the use of qualified and diverse technical, program and administrative staff.

6. Budget with Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and applicant's implementation plan.

7. Human Subjects Protection (not scored)

The extent to which the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports submitted within 90 days after the end of each budget period that includes:

a. Activities accomplished in the current fiscal year, presented in relation to what has been proposed (may submit either in narrative or workplan/chart format);

b. Progress on accomplishing comprehensive cancer control activities; and

c. Technical assistance needs of cooperative agreement recipient.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR 7 Executive Order 12372 Review
AR 8 Public Health System Reporting Requirements
AR 9 Paperwork Reduction Act Requirements
AR 10 Smoke-Free Workplace Requirements
AR 11 Healthy People 2010
AR 12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 247b

(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Jesse Robertson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 01115, Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2747, Email address: jrt4@cdc.gov.

For program technical assistance, contact: Leslie Given, MPA, Public Health Advisor, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K–57, Atlanta, GA, Telephone: (770) 488–3099, Email address: llg5@cdc.gov.

Dated: June 7, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–14858 Filed 6–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01105]

Replication and Implementation of Scientifically-Proven Asthma Interventions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Replication and Implementation of Scientifically-Proven Asthma Interventions. This program addresses the ''Healthy People 2010'' focus area of Respiratory Diseases.

The purpose of the program is to implement one of the following scientifically proven asthma interventions: (1) ''Open Airways'' or (2) ''Asthma Care Training for Kids: ACT', to improve quality of life, decrease acute care visits, decrease hospitalizations, and increase compliance with asthma care plans and asthma medication regimens. These existing interventions have been selected because they have been validated as being safe and effective.

No research may be conducted as part of this cooperative agreement.

B. Eligible Applicants

Applications may be submitted by non-profit, public and private organizations or agencies that have affiliate/local offices in States, U.S. territories, or Indian tribes or Indian tribal organizations; local education agencies; hospitals; community-based organizations; managed care organizations; community health centers, and city or county public health agencies.

To be an eligible applicant, you must provide the following:

1. Evidence that applicant has direct access to target populations needed to implement these interventions.
2. Evidence of an established record of successful service in the community, through letters of support.
3. Evidence, through letters of support, of working relationships with other appropriate organizations within the specific community of the target populations.
4. If the applicant proposes the use of ''Open Airways'', then a specific letter of support from the local chapter of American Lung Association is required.

This documentation should be placed after the face page of the application. An applicant that does not provide the above documentation will be determined non-responsive and returned without review.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2001 to fund approximately five to ten awards. It is expected that the average award will be $125,000, ranging from $100,000 to $150,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding preferences may include: (1) Geographic distribution, (2) racial and ethnic populations with a disproportionate asthma burden, (3) the mix between the two interventions to be implemented under this announcement, and (4) balance of organization type (i.e. Non-profit, managed care, community-based organization, etc.).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Implement the selected science-based asthma intervention designed to improve the quality of life of persons with moderate to severe persistent asthma by improving overall management of the disease.

b. Develop a quality assurance plan that allows confirmation that the implementation adheres to the selected intervention protocol.

c. Develop a plan to integrate the intervention into the organization's standard practice over time assuring institutionalization of the intervention. If needed, institute activities to change organizational policies and health care provider practices to ensure institutionalization.

2. CDC Activities

a. If requested, provide consultation and technical assistance regarding the implementation and evaluation of the intervention.

b. Provide liaison among grantees and potential sources of information and assistance.

c. Coordinate activities among sites, when appropriate.

d. Convene meetings among collaborators to discuss program issues, when appropriate.

E. Content

Letter of Intent (LOI)

A non-binding LOI is requested, and it should include:

1. Name and address of organization;
2. Contact person; and
3. Selected intervention.

The LOI will be used to ascertain the level of interest in this announcement and to assist in determining the size and composition of the independent review panel.

Applications

To develop the application content, use the information below in addition to the information listed in ''Program Requirements,'' ''Other Requirements,'' and ''Evaluation Criteria'' sections. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application, excluding appendices, should be no more than 15 double-spaced pages, printed on one side, with one-inch margins, and unreduced font. The application must be submitted unstapled and unbound.

1. Description of Applicant, Health Problem, and Population To Be Served

Describe the applicant's organization type (i.e., school district, community health center, local health department, etc.) and structure. Describe the population to be served and the asthma problem that will be addressed in this population by the intervention. Provide data to demonstrate the number of persons with moderate to severe persistent asthma who will be enrolled in the intervention over the three-year period and describe the source of that data.

2. Program Plan

a. Describe in detail the plans for implementing the intervention in the described population. Provide information on how the applicant will access the intervention protocol and the materials necessary for the intervention. Provide specific objectives for the proposed activities that are realistic, time-phased, and measurable, and reflect the three-year period of this announcement. Assure that the intervention patients are receiving appropriate medical care (based on the National Asthma Education and Prevention Program (NAEPP) Guidelines) prior to enrollment in the intervention activity. For school-based projects, describe which of the American Lung Association/Kaiser Permanente Key Elements of School-based Asthma Management are already implemented (see attachment 2, part II, for reference).

b. Describe in-kind contributions of the organization to support the intervention, the plan to integrate the intervention into its standard practice over time, and document the agency's willingness to do so. Describe policy and practice changes necessary to make institutionalization possible.

3. Evaluation of Intervention

Describe how progress toward effective implementation of the intervention will be evaluated. Describe proposed process evaluation measures. (Note: Because the safety and effectiveness of the interventions to be implemented has been demonstrated previously, outcome evaluation will not be funded through this announcement.)

4. Management and Staffing Plan

a. Describe the qualifications, primary roles and responsibilities for each of the project staff over the three-year grant period. Include a description of intervention staff and the management plan for oversight of these staff.

b. Provide a plan to expedite filling of the staff position(s) and assure that they have been or will be approved by the applicant's personnel system.

c. Describe in detail needed training for staff and how that training will be provided.

5. Budget

This section must include a detailed first-year budget and narrative justification and future annual projections. The applicant should describe the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown or a justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance, and the method of selection. [Note: The funds for this intervention may not be used to supplant existing funds.]

F. Submission and Deadline

Letter of Intent (LOI)

On or before July 16, 2001, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

On or before August 13, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of Applicant, Health Problem and Population To Be Served (15 points)

The extent to which the applicant describes the understanding of the population's need. Applicant's description of and access to an adequate number of the target population. Adequate description of the source of the data provided describing the target population.

2. Program Plan (35 points)

a. The extent to which the applicant describes the appropriateness of the proposed approach to implementation of the intervention. The ability to meet the objectives and the adequacy of the plan to carry out the proposed activities within the time-line provided.

b. The extent to which objectives are measurable against the stated purpose of the cooperative agreement. Applicant description of access to the information and materials necessary for the implementation of the intervention.

c. The extent that organizational support and the feasibility of the plan for institutionalization is described by the applicant.

3. Evaluation of Intervention (30 points)

The extent to which the applicant describes the feasibility and appropriateness of the plan to monitor progress toward meeting the objectives of the project. Appropriateness of proposed process measures.

4. Management and Staffing Plan (20 points)

The extent to which the applicant's overall ability to perform the proposed activities as reflected in the staff's qualifications and experience are described. The demonstration of the timely start of the intervention plan through the expedited hiring or availability of staff. Description of and access to needed training for staff.

5. Budget (Not scored)

The extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds.

F. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements may be applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, [42 U.S.C. section 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Sonia Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2724, Email address: Srowell@cdc.gov.

For program technical assistance, contact: Dan Burrows, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE (MS-E17), Atlanta, GA 30333, Telephone number: (404) 498–1004, Email address: DBurrows@cdc.gov.

Dated: June 7, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–14857 Filed 6–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting consumer representatives and nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2002.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by July 13, 2001, for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for consumer representatives should be submitted in writing to Maureen A. Hess (address below). All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for industry representatives should be submitted in writing to Kathleen L. Walker (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding consumer representatives: Maureen A. Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006, e-mail: MHess@OC.FDA.GOV.

Regarding industry representatives: Kathleen L. Walker, Office of Systems and Management (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: KLW@CDRH.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting members representing consumer and industry interests for the vacancies listed below:

Medical Devices Panels	Approximate Date Representative is Needed	
	Consumer	Industry
Anesthesiology and Respiratory Therapy Devices Panel	Dec. 1, 2001	Dec. 1, 2001
Circulatory System Devices Panel	July 1, 2002	NV[1]
Clinical Chemistry and Clinical Toxicology Devices Panel	Mar. 1, 2002	NV[1]
Dental Products Panel	NV[1]	Nov. 1, 2001
General Hospital and Personal Use Devices Panel	NV[1]	Jan. 1, 2002
Ophthalmic Devices Panel	Nov. 1, 2001	Nov. 1, 2001

[1]NV = No vacancy

I. Function

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or

reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Consumer and Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

III. Nomination Procedures

A. Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to haveno conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

B. Industry Representatives

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedures

A. Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

B. Industry Representatives

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 7, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–14814 Filed 6–13–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0236]

New Food Chemicals Codex Monographs, Revisions of Certain Food Chemicals Codex Monographs, Revision of a General Test Procedure, and New Test Solutions; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on proposed new Food Chemicals Codex specification monographs, proposed changes to certain Food Chemicals Codex specification monographs, a proposed revision of a general test procedure, and proposed new test solutions. Additions, revisions, and corrections to current specification monographs for certain substances used as food ingredients, as well as new monographs and test solutions, and a revised test procedure, are being prepared by the National Academies, Institute of Medicine (IOM), Committee on Food Chemicals Codex (the committee). This material is expected to be included in the next publication of the Food Chemicals Codex (the third supplement to the fourth edition), scheduled for public release in the summer of 2001.

DATES: Submit written comments by July 30, 2001. (The committee advises that comments received after this date may not be considered for the third supplement to the fourth edition. Comments received too late for consideration for the third supplement will be considered for the fifth edition of the Food Chemicals Codex.)

ADDRESSES: Submit written comments and supporting data and documentation to the Committee on Food Chemicals Codex/FO–3038, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the proposed new Food Chemicals Codex specification monographs, proposed new test solutions, proposed changes to certain monographs, and proposed revision to a

general test procedure may be obtained upon written request from the IOM (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs, test procedure, or test solutions desired. For electronic access see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ricardo A. Molins, Project Director/FO–3038, Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or Paul M. Kuznesof, Division of Product Manufacture and Use (HFS–246), Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of August 8, 2000 (65 FR 48521), and of January 22, 2001 (66 FR 6624), as corrected on February 9, 2001 (66 FR 9710), FDA announced that the committee was considering new and revised monographs, new and revised general test procedures, revised test solutions, and revisions to a policy for inclusion in the third supplement to the fourth edition of the Food Chemicals Codex. FDA is now announcing that the committee is soliciting comments and information on additional proposed new Food Chemicals Codex specification monographs, on additional proposed changes to certain monographs, on an additional proposed revised general test procedure, and on proposed new test solutions. These new and revised monographs, revised test procedure, and new test solutions are also expected to be published in the third supplement to the fourth edition of the Food Chemicals Codex. If comments are received that cannot be addressed by the committee before publication of the third supplement, the new monographs or test solutions, revised monographs, or revised test procedure affected will be considered for the fifth edition of the Food Chemicals Codex. Copies of the proposed items may be obtained upon written request from IOM at the address listed above or through the Internet at http://www.iom.edu/fcc.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new or revised monographs, revised test procedure, or new test solutions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and test solutions and changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the 33 proposed new monographs, 22 proposed revisions of current monographs, proposed revised general test procedure, and 2 proposed new test solutions listed below:

I. Proposed New Monographs

Acidified sodium chlorite solutions
Aspartame-acesulfame salt
Curdlan
Flavor Chemicals
- 2,6-Dimethoxyphenol
- 3,4-Dimethyl-1,2-cyclopentandione
- 5-Ethyl-3-hydroxy-4-methyl-2(5H)-furanone
- 3-Ethyl pyridine
- Furfuryl mercaptan
- Geranyl isovalerate
- 2,3-Heptandione
- Hexyl butyrate
- Hexyl hexanoate
- Isoamyl isobutyrate
- Isobutyl formate
- Isobutyl hexanoate
- Linalool oxide
- Methyl hexanoate
- Methyl isovalerate
- Methyl thiobutyrate
- Methyl valerate
- 5-Methyl furfural
- beta-Naphthylethyl ether
- Phenylethyl cinnamate
- Phenylethyl propionate
- Propyl mercaptan
- Propyl formate
- delta-Tetradecalactone
- 2-Tridecanone

gamma-Cyclodextrin
Polyglycerol polyricinoleic acid
Pork collagen
Solin oil
Sucrose acetate isobutyrate

II. Current Monographs to which the Committee Proposes to Make Revisions

Calcium sulfate (Formula weight and CAS number revised to show the dihydrate; Heavy Metals determination deleted)
Canola oil (Description and Functional Use in Foods modified; Heavy Metals determination deleted)
Cellulose gum (Specifications for Degree of Substitution and Sodium modified; Heavy Metals determination deleted)
Citric acid (Description revised; Heavy Metals and Ultraviolet Absorbance specifications deleted; Tridodecylamine specification revised; Readily Carbonizable Substances test replaced; Residue on Ignition test reworded)
Cocoa butter substitute (Description corrected; Heavy Metals determination deleted)
Ethoxyquin (Description, Assay Limit, and Assay Test modified; Heavy Metals specification deleted; Lead, *p*-Phenetidine, and *p*-Phenetidine-Related Impurities specifications added)
Flavor Chemicals
- Acetoin (structures revised)
- 2-Acetylpyrrole (physical form and melting range revised; water deleted)
- Anisole (assay revised)
- Ethylene brassylate (assay revised)
- Ethyl phenylglycidate (assay revised)
- Geranyl benzoate (assay revised)
- alpha-Ionone (assay revised)
- *dl*-Menthyl acetate (solubility in alcohol added)
- 4-Methyl-2-pentanone (refractive index revised)
- delta-Nonalactone (refractive index and specific gravity revised)
- (E)-2-Nonen-1-ol (refractive index revised)
- delta-Octalactone (specific gravity revised)
- (E)-2-Undecenol (solubility in alcohol added)

Maltitol (Description corrected; Assay limit of D-Maltitol revised; entire Identification, Assay, and Reducing Sugars tests provided; Other Hydrogenated Saccharides specifications added)
Rapeseed oil, fully hydrogenated (Description and Functional Use in Foods modified; Heavy Metals determination deleted)
Rapeseed oil, superglycerinated (Description and Functional Use in Foods modified; Heavy Metals determination deleted)

III. Proposed Revised General Test Procedure

Peroxide Value (A second Peroxide Value test has been added to Appendix VII: Fats and Related Substances)

IV. Proposed New Test Solutions

Nickel Standard Solution TS (10 milligrams per kilogram)
Acetic Acid TS, Strong (5 Normal)

V. Comments and Electronic Access

Interested persons may submit to the Committee on Food Chemicals Codex written comments regarding the monographs, general test procedure, and test solutions identified in this notice by July 30, 2001. Timely submission will allow comments to be considered for the third supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the third supplement, but will be considered for the fifth edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs, the general test procedure, or the test solutions listed in this notice are to be submitted to the Committee on Food Chemicals Codex (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. The committee staff will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies of the proposed changes may also be obtained through the Internet at http://www.iom.edu/fcc.

Dated: June 4, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–14864 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Transmissible Spongiform Encephalopathies (TSE) Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 28, 2001, 8 a.m. to 5 p.m. and on June 29, 2001, 8 a.m. to 11:30 a.m.

Location: Holiday Inn, Versailles Ballroom I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas, or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 28, 2001, the committee will review and discuss the suitability of blood donors who have lived or traveled in various countries based on recent information concerning new-variant Creutzfeldt-Jakob disease and bovine spongiform encephalopathy in those countries. In the afternoon, the committee will discuss the safety of FDA-regulated plasma derivatives prepared in establishments proposing to use on the same manufacturing line, plasma which does and plasma which does not comply with current U.S. standards, with regard to donor deferral for vCJB risk factors. On June 29, 2001, the committee will discuss the interim results of a new study on the inactivation of TSE agent by the manufacturing process for gelatin.

Procedure: On June 28, 2001, from 8 a.m. to 4:30 p.m. and June 29, 2001, from 8 a.m. to 11:30 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 15, 2001. Oral presentations from the public will be scheduled between approximately 10:50 a.m. and 11:30 a.m., and between approximately 2:30 p.m. and 3:10 p.m. on June 28, 2001, and between approximately 10 a.m. and 10:30 a.m. on June 29, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 15, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 28, 2001, from 4:30 p.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 5, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–14812 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0224]

Draft Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues.'' This draft guidance describes the basic principles the agency recommends for development, evaluation, or application of qualitative mass spectrometric methods for confirming the identity of new animal drug residues. This draft document is intended for technical professionals familiar with mass spectrometry. A glossary at the end of the draft guidance defines key terms used throughout the document.

DATES: Submit written comments by September 11, 2001.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

fdadockets@oc.fda.gov. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: David N. Heller, Center for Veterinary Medicine (HFV–510), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–827–8156, e-mail: dheller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) requires FDA to determine whether each new animal drug proposed for use in food-producing animals is safe and effective. In some cases, the new animal drugs used in food-producing animals have the potential to adversely affect the health of the humans who consume food derived from these animals. The sponsor of the new animal drug is responsible for establishing the safety of each new animal drug through appropriate tests.

To determine human food safety of new animal drugs, FDA evaluates the information/data, identifies and characterizes potential hazards, assesses exposure levels and characterizes the overall risk. Through this process, FDA establishes an allowable daily intake and tolerances (the amount of drug residue allowed in tissues) for each drug. Drug sponsors submit to FDA analytical methods that are designed to measure the concentration of the proposed drug in the edible tissues at the drug's tolerances. Analytical methods are used to monitor the tolerances set by FDA. FDA reviews the analytical methods during its review of new animal drug applications (21 CFR 514.1(b)(7)).

Analytical methods may also be used to monitor safe levels as established by the agency. Under section 512(a)(4)(B) of the act and 21 CFR 530.22, the agency may establish a safe level for extra-label use of a drug when the agency finds that there is a reasonable probability that an extra-label use may result in drug residues in edible tissue of the treated animals at a level that may present a risk to the public health if it was above the safe level. Under the same provisions, FDA may require the development of an acceptable analytical method for the quantification of residues above any safe level.

FDA issues guidance recommending methods of analysis to potential sponsors to foster timely and objective review of proposed new animal drugs, including the review of analytical methods. In the **Federal Register** of December 31, 1987 (52 FR 49589), FDA announced the availability of a set of eight guidance documents entitled ''General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals'' (52 FR 49589); revisions to one of the guidances were announced in the **Federal Register** of July 22, 1994 (59 FR 37499). These guidances were designed to inform sponsors of the scientific data that FDA believes will provide an acceptable basis for determining the safety of such compounds, and for designing analytical methods.

Part V in the above-mentioned set of guidances, entitled ''Guideline for Approval of a Method of Analysis for Residues,'' recommended that sponsors develop rugged methods of analysis designed to exceed rather than meet the minimal standards of acceptability. This serves two purposes: (1) To lower the number of method of analysis submissions that pass desk review but fail interlaboratory studies designed to test their effectiveness, and (2) to increase the precision and specificity of safety determination by ensuring a higher quality assay. The guidance then explained the evaluation criteria and data needed for approval of a method of analysis.

The draft guidance entitled ''Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues'' is designed to complement part V of ''General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals.'' The purpose of this document is to facilitate and expedite coordination between FDA's Center for Veterinary Medicine (CVM) and sponsors so the development, evaluation, and application of qualitative mass spectrometric methods will be completed in a consistent and timely manner.

This draft document is intended for technical professionals familiar with mass spectrometry. A glossary at the end of the draft guidance defines key terms used throughout the document.

This draft guidance should be used in the development of new methods, the review of methods submitted to CVM, and in the laboratory trial of methods submitted to CVM. The document also should help in making decisions about appropriate methodology in various regulatory situations and ensuring consistency in work done for CVM's purposes.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance describes the basic principles the agency recommends for development, evaluation, or application of qualitative mass spectrometric methods for confirming the identity of new animal drug residues. 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 statute and regulations.

Information collection provisions described in this guidance have been approved under OMB control numbers 0910–0032 and 0910–0325.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by September 11, 2001. 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. A copy of the draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Comments on the draft guidance may be electronically submitted at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Electronic copies of the draft guidance and other guidances discussed in this notice may be obtained at http://www.fda.gov/cvm.

Dated: May 30, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–14813 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–297]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested

persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Existing collection in use without an OMB control number; *Title of Information Collection:* Request for Employment Information; *Form No.:* HCFA–R–297 (OMB# 0938–0787); *Use:* This form is needed to determine whether a beneficiary can enroll in Part B Medicare and/or qualify for premium reduction. This form is used by the Social Security Administration to obtain information from employers regarding whether a Medicare beneficiary's coverage under a group health plan is based on current employment.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 5,000; *Total Annual Responses:* 5,000; *Total Annual Hours:* 750.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address and phone number, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 5, 2001.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–14884 Filed 6–12–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) and Native Hawaiian Health (NHH) Scholarship Programs Data Collection Worksheets (OMB No. 0915–0226)—Extension

The NHSC and NHH Scholarship Programs were established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under these programs, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC or NHH program, students of other health professions are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees, other reasonable costs (ORC) and a stipend for living expenses. In exchange, the scholarship recipients agrees to provide full-time clinical services at a site in a federally designated HPSA.

In order to accurately determine the amount of scholarship support that students will need during their academic training the Bureau of Primary Health Care must contact each scholars's school for an estimate of tuition, fees, and ORC. The Data Collection Worksheet collects these itemized costs for both resident and nonresident students.

Estimated Burden Hours

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Worksheet	600	1	600	.50	300

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 6, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–14866 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 2001:

Name: National Advisory Council on Migrant Health.

Date and Time: July 15, 2001; 9 a.m. to 5 p.m.; July 16, 2001; 9 a.m. to 5 p.m.

Place: Courtyard Marriott, 300 West Michigan Street, Milwaukee, Wisconsin 53203. Phone: (414) 291–4122; Fax (414) 291–4188.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include development of expert background papers to support the Council's recommendations, as well as mission statements and action plans of the Council's subcommittees. The Council will also discuss issues around portability of Medicaid benefits, and Migrant Health voucher programs. Finally, the Council will participate in the annual meeting of the National Council of La Raza, which is being held in Milwaukee during the same period of time.

Anyone requiring information regarding the subject Council should contact Judy Rodgers, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–4304.

Agenda items are subject to change as priorities indicate.

Dated: June 6, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–14865 Filed 6–12–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: May 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABRAMYAN, EDIK ..... BURBANK, CA	04/26/2000
ACKLEY, PAULA IRENE ..... MARATHAN, FL	06/20/2001
AHMED, KHALID ..... SUISUN CITY, CA	06/20/2001
ANDERS, ROBIN MARIE ..... TACOMA, WA	06/20/2001
ARTHRITIS & PAIN CTR, INC LAKE PLACID, FL	06/20/2001
ATIKAIN, PETROS M ..... TAFT, CA	06/20/2001
ATTIA, NADER ANISZAKY ..... BROOKLYN, NY	06/20/2001
CARR, PATRICIA ..... BROWNS MILLS, NJ	06/20/2001
CASADA, KAREN R ..... SPRINGFIELD, MO	06/20/2001
COMPUTER HEALTH SVCS OF DADE ..... TAMPA, FL	02/16/2000
CORRIE, PAMELA H ..... COLEMAN, FL	06/20/2001
CRAMPTON, MICHAEL W ..... JACKSONVILLE, AR	06/20/2001
DEL VAL, TOMASA NANCY .... MIAMI SPRING, FL	06/20/2001
DELGADO, PEDRO ..... MIAMI, FL	06/20/2001
DEMARIA, WILLIAM R JR ..... PALM BCH GARDENS, FL	07/12/2000
DIAZ, REYNALDO ..... WATERBURY, CT	06/20/2001
DIAZ-PELLOT, NORMA ..... PEMBERTON, NJ	06/20/2001
DURST, LARRY ..... FORT DIX, NJ	06/20/2001
DURST, SHELDON ..... MONTGOMERY, PA	06/20/2001
ENEMUO, KENNETH ..... PINE BROOK, NJ	06/20/2001
GARCIA, OMAR J ..... MIAMI, FL	06/20/2001
GONZALEZ, BERNARDO ..... MIAMI, FL	06/20/2001
GUSSMAN, MICHAEL ..... MARLTON, NJ	06/20/2001
JENNINGS, DEBRA ..... TACOMA, WA	06/20/2001
JORGENSEN, KELLY ROSS ... MILL CREEK, WA	06/20/2001
KALANI, GHANSHYAM ..... OTISVILLE, NY	06/20/2001
KELL, MICHAEL J ..... ATLANTA, GA	06/20/2001
KYLE, CAROL ..... MEYERSDALE, PA	06/20/2001
LISS, IRA H ..... NEW PORT RICHEY, FL	06/20/2001
MARTINEZ, LYDIA ..... DANBURY, CT	06/20/2001
MCDONOUGH, SUSAN CAROL ..... O'FALLON, MO	06/20/2001
MICHAEL'S PHARMACY, INC NEW YORK, NY	06/20/2001
MILLER, DEIRDRE T ..... WILLINGBORO, NJ	06/20/2001
MUNGEN, JONETTA V ..... NEWARK, NJ	06/20/2001
MUNSTERMAN, STEFANIE P K ..... TROY, KS	06/20/2001
NACHAMIE, ALAN BARTON ... BROOKLYN, NY	06/20/2001
ORDOUBADI, NASSER ..... SHERIDAN, OR	06/20/2001
ORTEGA, CHRISTINE ..... HONDO, TX	06/20/2001
PATEL, SEJAL C ..... INDIANAPOLIS, IN	06/20/2001
PFEIFER, SARAH JEAN ..... PUEBLO, CO	06/20/2001
PICARD, ROBERT H ..... WARE, MA	06/20/2001
PORTER, TAMARA L ..... GLENDALE, AZ	06/20/2001
PUNALES, JESUS ..... HIALEAH GARDENS, FL	06/20/2001
REDDICK, HARRIS JOHN ..... DETROIT, MI	06/20/2001
ROBERTS, JULIE A ..... SPRINGFIELD, MO	06/20/2001
SADATRAFIEI, AZAM ZARI ..... BOSTON, MA	06/20/2001
SCHRAGER, KENNETH JOEL OTISVILLE, NY	06/20/2001
SHERRICK, CRYSTAL L ..... FREDERICKTOWN, MO	06/20/2001
SHUSTER, LARRY B ..... PHILADELPHIA, PA	06/20/2001
SIEGEL, ALAN ..... RYE, NY	06/20/2001
SOYFER, ALEXANDER ..... WOODBRIDGE, NJ	06/20/2001
SPUZA, MICHAEL P ..... ST PETERSBURG, FL	06/20/2001
TRUJILLO, DIANE ..... COMMERCE CITY, CO	06/20/2001
TRUJILLO-ALEN, CARIDAD .... MIAMI, FL	06/20/2001
TUCKER, SAMUEL J ..... DECATUR, GA	06/20/2001
VALERA, FELICIA ..... MIAMI, FL	06/20/2001
VILLOTA, CLARA ..... MIAMI, FL	06/20/2001
VINING, DONNA BOLES ..... DANBURY, CT	06/20/2001
WHITE, DOUGLAS R	06/20/2001

Subject, city, state	Effective date
ATLANTA, GA	
FELONY CONVICTION FOR HEATH CARE FRAUD	
MALADY, SUSAN BLAIRSTOWN, NJ	06/20/2001
MCCARGISH, MILDRED ANN YUM, CO	06/20/2001
STEVENSON, LISA ANN DES MOINES, IA	06/20/2001
WILTS, LAURA FAYE WHITE, SD	06/20/2001
FELONY CONTROL SUBSTANCE CONVICTION	
ROLKO, ERICH SCOTT RANCHO CUCAMONGA, CA	06/20/2001
SONS, KAREN A HOBART, IN	06/20/2001
STEIN, MICHAEL P RANDOLPH, NJ	06/20/2001
UNANGST, JENNIFER L WINOOSKI, VT	06/20/2001
VOGEL, MARY ANN LA MIRADA, CA	06/20/2001
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALVAREZ, JESUS ANAHEIM, CA	06/20/2001
BROWN, ARTHUR LEE LAS VEGAS, NV	06/20/2001
CHEATHAM, JEFFREY BUFFALO, NY	06/20/2001
CHRISTMAN, LAURA LLYN N POWDER, OR	06/20/2001
CHRISTMAN, MARION BRUCE NORTH POWDER, OR	06/20/2001
CURE, PHYLLIS A CLIFTON PARK, NY	06/20/2001
KONYEASO, PATRICIA RANDALLSTOWN, MD	06/20/2001
KUHN, NANCY ROCHESTER, NY	06/20/2001
LONGCOR, JOSHUA CHRISTIAN FT BRAGG, CA	06/20/2001
MAJORS, ORVILLE LYNN LINTON, IN	06/20/2001
MANN, FRANCES HENRIETTA, NY	06/20/2001
MARSHALL, JAMES BRADNEY SALT LAKE CITY, UT	06/20/2001
MCCLINTON, YARKESHILA DEANN PINEVILLE, LA	06/20/2001
PETTIE, MARY LOUISE TULSA, OK	06/20/2001
RANDOLPH, MARY JO MIAMI, OK	06/20/2001
SHELTON, STEVEN HALEY WESTMINSTER, CO	06/20/2001
LICENSE REVOCATION/SUSPENSION/SURRENDER	
ABDELHAMID, MANAL GUTTENBERG, NJ	06/20/2001
ADSON, MARTIN H MINNEAPOLIS, MN	06/20/2001
ALLEN, ELIZABETH A EASTHAM, MA	06/20/2001
ARNOLD, WENDY HUMBLE, TX	06/20/2001
AUGUSTINE, LINDA KAY KITTANNING, PA	06/20/2001
BARTH, THOMAS LESLIE NEW BOSTON, TX	06/20/2001
BASTIAN, TONYA LYNN ARNETTE ENTERPRISE, AL	06/20/2001
BEACH, CHRISTOPHER HUGH FELTON, CA	06/20/2001
BEAUDION, GWENDOLYN ALEXANDRIA, LA	06/20/2001
BEDARD, ANNE M SALEM, MA	06/20/2001
BELL, KIMBERLY F ORTLEY BEACH, NJ	06/20/2001
BENNETT, DELORIS M NEW WAVERLY, TX	06/20/2001
BONENFANT, LISA SANTA CLARITA, CA	06/20/2001
BOROM, ANGELIQUE DINKINS MONTGOMERY, AL	06/20/2001
BRAEMER, NICHOLAS G PALOS VERDES ESTATES, CA	06/20/2001
BROWNING, SALLY ROBINSON ALLENTOWN, PA	06/20/2001
BURK, LINDA HOLMES WARREN, PA	06/20/2001
BUTCHER, TOBY J LUBBOCK, TX	06/20/2001
CALIX, RAUL O LOS ANGELES, CA	06/20/2001
CAPOVILLA, JANET LAS VEGAS, NV	06/20/2001
CARLE, SUSAN MACGILL LONG BEACH, CA	06/20/2001
CARLSON-MCPADDEN, KAREN L MONROE, CT	06/20/2001
CARRIERE, SHEILA LYNN VERNON, TX	06/20/2001
CASTALDI, JACQUELINE M DENVER, CO	06/20/2001
CHENAULT, WYNOKA SUE GONZALES, TX	06/20/2001
CHRISTENSEN, DENNIS W SAN FRANCISCO, CA	06/20/2001
COBB, CAROL M CHATTANOOGA, TN	06/20/2001
COMER, JULIE DIANE WINSLOW, IN	06/20/2001
CORLEW, ANN MARIE BALLSTON SPA, NY	06/20/2001
CUPO, DAWN FARMINGDALE, NJ	06/20/2001
DEHOTMAN, CHRISTIE LEIGH EASTABOGA, AL	06/20/2001
DIFEDERICO, WILLIAM M STRATFORD, CT	06/20/2001
DOUNEL, SAID FOREST HILLS, NY	06/20/2001
DURAN, LISA HENDERSON, NV	06/20/2001
DURANT, JOHN ERIE, PA	06/20/2001
DYER, JEANNINE M ORDWAY, CO	06/20/2001
ELEY, ELMER L GUNTERSVILLE, AL	06/20/2001
EMERSON, GARY TUCSON, AZ	06/20/2001
EUDY, ALECIA N SILOAM SPRINGS, AR	06/20/2001
FONTANA, TAMMY WEST MONROE, LA	06/20/2001
FREEMAN, STACY RHONE WILLIAMSPORT, PA	06/20/2001
FUENTECILLA, RUEL FORONDA NORWALK, CA	06/20/2001
GARNER, MARLO BURNETT CHICAGO, IL	06/20/2001
GAUL, GERALYN M NEW HAMPTON, IA	06/20/2001
GIBSON, VALENCIA BARNES HOUSTON, TX	06/20/2001
GODSELL-STYTZ, GAYL MARIE BEAVERCREEK, OH	06/20/2001
GORDON, STEVEN AUSTIN, TX	06/20/2001
GUAY, DEREK G FLORENCE, SC	06/20/2001
GUIDRY, ANN OPELOUSAS, LA	06/20/2001
GUNTER, FELECIA D CHARLESTON, SC	06/20/2001
GWAK, CHRISTINA SOOK-UN REDLANDS, CA	06/20/2001
HAMBLIN, DAVID LEE PROVO, UT	06/20/2001
HAMMOND, GINA RENE E MOLINE, IL	06/20/2001
HARRIS, ERIQ T CHICAGO, IL	06/20/2001
HARRIS, CAROL LUZERNE, PA	06/20/2001
HAYS, MARGARET RENO, NV	06/20/2001
HENTON, ERNEST B JR CHICAGO, IL	06/20/2001
HILL, DEBRA A NEWPORT NEWS, VA	06/20/2001
HINER, JAN O ERVIN OMAHA, NE	06/20/2001
HOLMES, ROBERT LEE JR SAN DIEGO, CA	06/20/2001
HOWARD, ROBIN ANN TRENTON, NJ	06/20/2001
HUTTO, CHARLOTTE J JOHNSON PERRYVILLE, AR	06/20/2001
IZBICKI, LORI J ERIE, PA	06/20/2001
JAMISON, ROBERT W CHERRY HILL, NJ	06/20/2001
JANFLONE, MICHAEL F PITTSBURGH, PA	06/20/2001
JEFFRIES, COMIKA L CHARLOTTSVILLE, VA	06/20/2001
JENSEN, GARYE SHAWN APISON, TN	06/20/2001
JOHNSON, SHINITIA T INGLEWOOD, CA	06/20/2001
JOHNSON, JULIE ANN MANTUA, NJ	06/20/2001
JOHNSTON, MARTHA NELSON	06/20/2001

Subject, city, state	Effective date
SPRUCE PINE, NC	
JONES, PATRICIA FAYE CARDWELL OKLAHOMA CITY, OK	06/20/2001
JONES, JAMES LEE JONESBORO, IL	06/20/2001
JUHL, THOMAS RICHARD SAN FRANCISCO, CA	06/20/2001
KATAN, SYLVIA LYNN WINNIE, TX	06/20/2001
KEELEN, SUSAN FLEMINGTON, NJ	06/20/2001
KERSHEY, LAURA HRUBY BELLE VERNON, PA	06/20/2001
KIBBE, TINA M NEDERLAND, TX	06/20/2001
KILCHER, CHERYL THOMAS PHILADELPHIA, PA	06/20/2001
KING, HAZEL BERNADETTE HUMBLE, TX	06/20/2001
KINNEY, BRANDY LYNN MUSKOGEE, OK	06/20/2001
KOETSCH, BETSY L STRATFORD, CT	06/20/2001
KOTARA, ANISSA FAYE CUERO, TX	06/20/2001
LAW, CANDICE LEE CRETE, IL	06/20/2001
LEKSEN, PAUL B RIALTO, CA	06/20/2001
LEWIS, DAVID KEITH FRUITLAND, ID	06/20/2001
LEWIS, GLORIA S EVINGTON, VA	06/20/2001
LEWIS, STEPHEN R SANTA MONICA, CA	06/20/2001
LITTLE, DOUGLAS JONATHAN SANFORD, NC	06/20/2001
LUONG, ANHUE THI TUSTIN, CA	06/20/2001
MACAULEY, SUSAN CARSON CITY, NV	06/20/2001
MACK, MICHAEL LESLIE CHICAGO, IL	06/20/2001
MARTINEZ, MARTIN J SALT LAKE CITY, UT	06/20/2001
MAXWELL, DEBORAH HANLON WATERTOWN, WI	06/20/2001
MAYHEW, TERESA A L KNOXVILLE, TN	06/20/2001
MAZZARELLA, WILLIAM H II SAN FRANCISCO, CA	06/20/2001
MCCOLGAN, PETER TANNERSVILLE, PA	06/20/2001
MCGOWAN, LAURA ANN TYLER, TX	06/20/2001
MEEMKEN, SANDRA LEE ST PAUL, MN	06/20/2001
MESSANA, BENEDICT JOSEPH MILL VALLEY, CA	06/20/2001
MINNOW, MARY SAYREVILLE, NJ	06/20/2001
MORRAY, RICHARD MERYL EDWARDSVILLE, IL	06/20/2001
MOSELEY, WILLIAM E III SPRINGFIELD, TN	06/20/2001
MULLOZZI, ANTHONY D JR LAS VEGAS, NV	06/20/2001
MUNDT, JANICE L LINDALE, TX	06/20/2001
MURPHY, DENISE DINO FAIRPORT, NY	06/20/2001
MURRAY, DONNA M DOWNINGTOWN, PA	06/20/2001
NELSON, SIGNA RAMONA HOBSON SAMANTHA, AL	06/20/2001
NORTHAM, BEN RICHARDSON, TX	06/20/2001
PATEL, RAMESH SHANKER BHAI OLD BRIDGE, NJ	06/20/2001
PEARCE, GAIL BROWN MOORESVILLE, NC	06/20/2001
PERESS, JAMILE A GREAT NECK, NY	06/20/2001
PERNA, DANA KENMORE, NY	06/20/2001
PERNO, MARY MOLESKI MUNCY, PA	06/20/2001
PERRY, TIMOTHY ALLEN SANTA ROSA, CA	06/20/2001
PIRNIA, ABDOLVAHAB STEVEN TEMECULA, CA	06/20/2001
QURTOM, HELMY ABDUL FATTAH BELTSVILLE, MD	06/20/2001
RANCK, SUSAN B LANCASTER, PA	06/20/2001
REILLY, ALAN D FREEPORT, ME	06/20/2001
RHUE, KEVIN SAN MARCOS, TX	06/20/2001
RIEBSCHLAEGER, TRACY DAWN WATAUGA, TX	06/20/2001
ROBINSON, CHRISTINE M DES MOINES, IA	06/20/2001
RODGERS, MELISSA LYNNE LAGO VISTA, TX	06/20/2001
ROMERO, ORLANDO JR VICTORVILLE, CA	06/20/2001
ROSENBERGER, DONNA APO, AE, NV	06/20/2001
ROSS, PAMELA LAS VEGAS, NV	06/20/2001
ROSSITER, PAMELA NICOLE LA PRAIRIE, IL	06/20/2001
RYAN, DAVID LEE W VALLEY CITY, UT	06/20/2001
SALBERG, TONYA RAE MINNEAPOLIS, MN	06/20/2001
SELDERS, MONET ANDREA HOUSTON, TX	06/20/2001
SHOEMAKER, JILL I SPRINGVALE, ME	06/20/2001
SILVA, JOYCEANN SOMERVILLE, MA	06/20/2001
SIX, BRENDA E LAS ANIMAS, CO	06/20/2001
SMITH, W JAMES PALM HARBOR, FL	06/20/2001
STARKEY, BRIAN LAS VEGAS, NV	06/20/2001
STIENTJES, KATHERINE K LOMBARD, IL	06/20/2001
STORMANN, LORRAINE F BANGOR, ME	06/20/2001
STOUP, LOUISA CANON CITY, CO	06/20/2001
STOVER, CHERYL MERRIE BETHALTO, IL	06/20/2001
STROYECK, CAROL A PANA, IL	06/20/2001
TATE, YONOUS MAYWOOD, IL	06/20/2001
THOMPSON, PAULA RENEE MARSEILLES, IL	06/20/2001
THOMPSON, CATHERINE S BAY SHORE, NY	06/20/2001
THORNE, ALISSA LYNN AVON, IL	06/20/2001
THORP, CHARLES FREDRICK ST PETERSBURG, FL	06/20/2001
TINSLEY, MARY ANN FORT WORTH, TX	06/20/2001
TIPTON, JANE MARIE LUCEDALE, MS	06/20/2001
TONN, PATTY LOU SAN ANGELO, TX	06/20/2001
TRACY, TERESA M W WARWICK, RI	06/20/2001
VALENTE, SHERRY A HIRAM, ME	06/20/2001
VERHUSEN, DEBORAH KAY DECATUR, IL	06/20/2001
VICKREY, ARLETTE ANN MOLINE, IL	06/20/2001
VIGIL, DANIEL DENVER, CO	06/20/2001
WALKER, PATRICIA CHARLESTON, SC	06/20/2001
WALLACE, CONNIE SUE SAN ANGELO, TX	06/20/2001
WHISENAND, MARY BETH DIXON, IL	06/20/2001
WHITING, BONNIE DENISE ARLINGTON, TX	06/20/2001
WILCOX, LISA GAIL DEKALB, IL	06/20/2001
WILLIAMS, DARLENE E ETOWAH, TN	06/20/2001
WILLIAMS, VIRGINIA EDMONDS, WA	06/20/2001
WILLIAMSON, LESLIE CHARONE ARAB, AL	06/20/2001
WILSON, ANNE M MT PLEASANT, SC	06/20/2001
WOLFE, PHYLLIS I BELGRADE, MT	06/20/2001
WONS, PAUL V PHILADELPHIA, PA	06/20/2001
WOODEN, TERRY LEE WINSTON SALEM, NC	06/20/2001
WYATT, DEBBIE ANN LA MESA, CA	06/20/2001
YOUNG, KAREN LYNN FULTONDALE, AL	06/20/2001
FEDERAL/STATE EXCLUSION/SUSPENSION	
BUTLER, BETH LORENE ALISO VIEJO, CA	06/20/2001
CEVALLOS, ANGELA KAY BIG SPRING, TX	06/20/2001
GUINTO, NATIVIDAD CARSON, CA	06/20/2001
FRAUD/KICKBACKS	
GUILLERMO, ROMEO D RICHARDSON, TX	03/24/2000
JONES, A B DALLAS, TX	04/13/2000
KOTHEIMER, GREGORY C	09/21/2000

Subject, city, state	Effective date
JACKSONVILLE, TX	
MABERRY, STEPHEN F FLOWER MOUND, TX	04/14/2000
MABERRY, C LOUISE ORANGE, TX	04/12/2000
MAY, JAMES GARY TAMPA, FL	02/16/2000
MENKE, WILLIAM J GULF BREEZE, FL	10/20/2000
REVIS, TERRANCE FRANKLIN SAPULPA, OK	03/15/1999
SPENCER, RODERICK YORBA LINDA, CA	12/13/2000
YAHOLA, ROMAN OKEMAH, OK	03/15/1999
OWNED/CONTROLLED BY CONVICTED EXCLUDED	
A FAMILY CARE CENTER COVINGTON, GA	06/20/2001
LA COVADONGA MEDICAL CENTER MIAMI, FL	06/20/2001
MICHAEL'S PHARMACY, INC BROOKLYN, NY	06/20/2001
PRIVATE CLINIC LABS ATLANTA, GA	06/20/2001
SPEECH & LANGUAGE ASSOC, INC CINCINNATI, OH	06/20/2001
DEFAULT ON HEAL LOAN	
ALVARADO, ENRIQUE CEDAR HILL, TX	06/20/2001
AULD, ROBIN MCMURRAY, PA	06/20/2001
BAILEY, GRIFFIN B JR HANFORD, CA	06/20/2001
BEIL, FLOYD M BOYNTON BCH, FL	06/20/2001
BIRDSELL, ESTHER V RANCHO PALOS VERDES, CA	06/20/2001
BIRNEY-DOBOGAI, REBECCA J APPLETON, WI	06/20/2001
BLEHL, THOMAS A ORLANDO, FL	06/20/2001
BOURLAND, CHARLES HARBOR, OR	06/20/2001
BUNDRANT, BRADLY FLORESVILLE, TX	06/20/2001
BURKE, ANDREA MARIE HOUSTON, TX	04/20/2001
CAMINITI, GREGORY N TAMPA, FL	06/20/2001
CAMPBELL, THOMAS N BEAUMONT, TX	06/20/2001
CARMAN, TIMOTHY P LA JOLLA, CA	05/17/2001
CHAPMAN, WILLIAM CHARLES JR SAN ANTONIO, TX	06/20/2001
CHIGER, BYRON J ACWORTH, GA	06/20/2001
CLARK, GARTH A HUMBLE, TX	06/20/2001
COTA, CHRISTOPHER T GRASS VALLEY, CA	06/20/2001
CREA, JOSE WAPPINGERS FALLS, NY	06/20/2001
CROMWELL, YVETTE D LITTLETON, CO	06/20/2001
DEASY, MARC A WYNNEWOOD, PA	06/20/2001
DELEONARDIS, MICHAEL S HOUSTON, TX	06/20/2001
DEMOSS, KATHLEEN M FLEMINGTON, NJ	06/20/2001
DENNIS-KIMBROUGH, KHRISTIE M K PITTSBURGH, PA	06/20/2001
DIKENGIL, MEHMET S EDGEWATER, NJ	06/20/2001
DUBEL, DAVID A GREENVILLE, NC	06/20/2001
DURKOP, DAVID A HOUSTON, TX	06/20/2001
DWELLY, BRUCE E FAIR OAKS, CA	06/20/2001
ERICKSON, PATRICK F NORTH BRANCH, MN	06/20/2001
FIELDS, JESSICA A NEW YORK, NY	06/20/2001
FLYNN, TIMOTHY G KENT, WA	06/20/2001
GILLESPIE, JON B KENNEBUNK, ME	06/20/2001
GIVARGIS, VLADMIR GLENDALE, CA	06/20/2001
GRIFFIN, AARON L ALTA LOMA, CA	06/20/2001
GUBNITSKY, MICHAEL COCONUT CREEK, FL	06/20/2001
HANE, GRACE S SANTA ANA, CA	06/20/2001
HENDRICK, DENEEN M MARYVILLE, TN	06/20/2001
HIGGWE, GOLDEN G DETROIT, MI	06/20/2001
HIGHT, GREGORY E GRASS VALLEY, CA	06/20/2001
JAMES, TYSHAUN M PORT WASHINGTON, NY	06/20/2001
KABISCH, THOMAS F ANN ARBOR, MI	06/20/2001
KUNA, TIMOTHY MADISON HGTS, MI	06/20/2001
MOSELY, LEE O JR HOUSTON, TX	06/20/2001
ODETTE, CAROLINE K HOUSTON, TX	05/03/2001
RODRIGUEZ, MARIA J SAN GERMAN, PR	06/20/2001
STEPHENS, GREGORY W HOUSTON, TX	06/20/2001
STUART, CLAUDETTE HOUSTON, TX	06/20/2001
TAHIJA, MARK J MINNEAPOLIS, MN	06/20/2001
TOWNSEND, LEO W ELK GROVE, CA	04/20/2001
TYSON, YVONNE A LONG BEACH, CA	06/20/2001
VINCZE, MARGARET OLD ORCHARD BCH, ME	06/20/2001
WALKER, STEVE L NASHVILLE, TN	06/20/2001
WASHINGTON, PATRICIA L TORRANCE, CA	06/20/2001
WIMBLY, TIMOTHY TYRONE OKLAHOMA CITY, OK	06/20/2001
WISEMAN-STRANG, JACQUELINE D COLUMBIA, MD	06/20/2001

Dated: May 4, 2000.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–14885 Filed 6–12–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Safe Harbor Agreement and Receipt of an Application for an Enhancement of Survival Permit Associated With Proposed Habitat Restoration Activities for Schaus Swallowtail Butterfly Within Cheeca Lodge, Upper Matecumbe Key, Monroe County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Cheeca Lodge (Applicant) proposes to enter into a Safe Harbor Agreement (SHA) with the U.S. Fish and Wildlife Service (Service) to restore habitat for the endangered Schaus swallowtail butterfly (*Papilio aristodemus ponceanus*) (butterfly) for a period of 10 years. The Service's Safe Harbor Policy provides that landowners may return properties enrolled under SHAs to conditions that existed prior to entering into the SHA (hereinafter referred to as baseline conditions). Returning enrolled properties to baseline conditions may result in the take of federally listed species, but such taking may be authorized under section 10(a)(1)(A) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act), provided that the actions taken pursuant to a signed SHA result in a net conservation benefit to the species. The Applicant has committed to implement such conservation measures for the butterfly and requests issuance of an enhancement of survival permit (ESP) in order to address the take prohibitions of section 9 of the Act should the Applicant choose to return the enrolled property to baseline conditions in the future.

The proposed conservation measures, and the possible future activities that could reduce the effectiveness of these conservation measures, will occur within a golf course owned and maintained by the Applicant in section

32, Township 63 South, Range 37 East, Monroe County, Florida.

The passage of hurricane Georges in 1998 destroyed natural and planted vegetation in the middle and lower Florida Keys. Efforts are currently underway by many landowners to restore vegetation on their properties. The Applicant intends to restore native tropical hardwood vegetation on portions of the enrolled property that currently are maintained as a golf course. With the assistance of the University of Florida Department of Entomology and using funding provided through the National Fish and Wildlife Foundation, the Applicant proposes to plant up to 600 native shrubs and trees within the enrolled property. These vegetation plantings will help create an estimated eight acres of native tropical hardwood forest on the property. Cheeca Lodge contains approximately 27 acres which will be covered under the subject SHA.

Future activities of the Applicant may result in the removal of some or all of the planted native vegetation. Removal of this vegetation could return the enrolled property to the baseline condition. Future alterations to the planted vegetation may destroy all or part of the potentially suitable butterfly habitat that will be established.

A more detailed description of the proposed conservation benefits and potential effects of returning the enrolled property to baseline conditions is provided in the **SUPPLEMENTARY INFORMATION** section below.

The SHA may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuance of the ESP will not result in significant environmental, economic, social, historical or cultural impacts and is, therefore, categorically excluded from review under the National Environmental Policy Act of 1969, as amended (NEPA), pursuant to 516 Departmental Manual 2, Appendix 1 and 516 Departmental Manual 6, Appendix 1. This notice is provided pursuant to section 10 of the Act and the Service's Safe Harbor Policy (**Federal Register** Vol. 64, No. 116, June 17, 1999, pp. 32717–32726). The Service specifically requests information, views, and opinions from the public via this notice. Further, the Service is specifically soliciting information regarding the adequacy of the SHA as measured against the Service's Safe Harbor Policy.

DATES: Written comments on the SHA and ESP application should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 13, 2001.

ADDRESSES: Persons wishing to review the SHA and ESP application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the SHA or ESP application should be submitted to the Regional Office and must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE–022736–0 in your comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Andrews, Regional Safe Harbor Program Coordinator, (see **ADDRESSES** above), telephone: 404/679–7217, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Schaus swallowtail butterfly is a large dark brown and yellow butterfly that inhabits tropical hardwood hammocks of extreme south Florida. Historically, the Schaus swallowtail butterfly was distributed from south Miami to Lower Matecumbe Key. More recently, Schaus swallowtail butterflies were known only from undisturbed tropical hardwood hammocks from Elliott Key in Biscayne National Park south to northern Key Largo. Reintroductions have recently occurred from southern Dade County to Lower Matecumbe Key. This species was Federally listed as endangered in 1984 due to habitat destruction, mortality associated with application of pesticides for mosquito control, and over-harvesting by collectors. These factors acting in combination with high natural mortality associated with predation of caterpillars resulted in substantial declines in the number and range of this species.

The Schaus swallowtail butterfly prefers dense, mature tropical hardwood hammocks where direct sunlight is filtered or dappled. Adults feed on a number of nectar producing plant species endemic to hardwood hammocks but have most often been observed feeding on guava (*Psidium guajava*), cheese shrub (*Morinda royoc*), and wild coffee (*Psychotria undata*). Adults rarely feed in open areas exposed to direct sunlight. The eggs of this species are typically laid on wild lime (*Zanthoxylem fagara*) and torchwood (*Amyris elemifera*) with larva subsequently eating the young, tender shoots of these species.

The proposed planting of native vegetation within the two enrolled properties will provide important food resources for dispersing butterflies. Currently, butterflies traveling south from core population centers on Key Largo and Biscayne National Park do not have dependable sources of nectar producing vegetation and, as a result, many of the dispersing butterflies are thought to perish during their dispersals. Suitable unoccupied habitat exists in the lower Florida Keys, but butterflies are not currently able to travel from the core population centers in the upper Florida Keys to these locations because food supplies are limited between these areas. The proposed conservation measures will reduce the distance butterflies will have to fly in order to find nourishment, resulting in increased survival of dispersing butterflies. Increased survival of dispersing butterflies is believed to enhance the probability of natural recolonization of unoccupied, suitable habitat in the lower Florida Keys.

The Applicant recognizes the inherent benefits of implementing the conservation measures for the butterfly, however, the Applicant also wishes to retain flexibility with respect to future land use of their property. Though not anticipated in the immediate future, such alterations in land uses may require the removal of some or all of the planted vegetation which could reduce, or remove entirely, the overall conservation value of these plantings to the butterfly. Accordingly, the Service has entered into the SHA with the Applicant and proposes to issue the requested ESP to cover the potential removal of butterfly habitat by the Applicant in the future to baseline conditions. The Service has established the baseline conditions at the enrolled property as zero (0) butterflies and no currently suitable butterfly habitat.

The Service will also evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings and any public comments, will be used in the final analysis to determine whether or not to issue the requested ESP.

Dated: May 29, 2001.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 01–14860 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Environmental Assessment and Finding of No Significant Impact for Federal Agency Participation in the Virgin River Resource Management and Recovery Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of a Final Environmental Assessment for Federal agency participation in the Virgin River Resource Management and Recovery Program.

SUMMARY: This notice advises the public that a Finding of No Significant Impact (FONSI) and the Final Environmental Assessment (EA) for Federal agency participation in the Virgin River Resource Management and Recovery Program (Program) are available for public review. The purpose of the proposed Federal action described in the EA is to formally declare intent of the Fish and Wildlife Service, the Bureau of Land Management, and the National Park Service to participate in the multiagency program designed to implement recovery actions for two endangered fish species, the woundfin and the Virgin River chub, as well as conservation actions for the Virgin spinedace, a species being managed as sensitive by the State of Utah and subject of a conservation agreement. In addition to implementing recovery actions, the Program will facilitate resolution of conflicts between endangered species protection and water development in the Virgin River Basin in Utah. Other participants include the State of Utah Department of Natural Resources, the Washington County Water Conservancy District, and Grand Canyon Trust, a local nonprofit environmental conservation group.

The EA addresses three alternatives: (A) A no action alternative for which the Federal agencies would not participate in the Program but would continue to administer and comply with the Endangered Species Act (Act) as previously done; (B) Federal agency participation in the Program which describes a process for administration and compliance with the Act that provides for full implementation of recovery and conservation actions for the protected fish species, as well as providing a mechanism for section 7 compliance of the Act that reduces conflict in the Utah portion of the Virgin River basin; and (C) Federal agency participation in a basinwide recovery program that includes implementation of the Program in Arizona and Nevada, as well as Utah. Based on the Finding of No Significant Impact, the U.S. Fish and Wildlife Service has determined that the proposed action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

DATES: Copies of the Final EA and FONSI will be mailed to affected Government offices and interested parties who specifically requested them. Those interested persons not on the EA mailing list may request a copy from the Project Leader at the address below. Written comments must be received on or before July 13, 2001.

All comments received will become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act Regulations (40 CFR 1506.6). When requested, comment letters with the names and addresses of the individuals who wrote the comments will generally be provided in response to such requests to the extent permissible by law. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comments.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Utah Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South State Street, Suite 404, Salt Lake City, Utah 84115. All comments and material received will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Henry R. Maddux, Utah Field Supervisor (see **ADDRESSES** above), or at 801–524–5001 extension 126.

SUPPLEMENTARY INFORMATION:

Background

The woundfin was listed as endangered on October 13, 1970 (35 FR 16047). The Virgin River chub was listed as endangered on August 24, 1989 (54 FR 35305). The Virgin River Fishes Recovery Plan (VRFRP), which included recovery of both woundfin and Virgin River chub, was finalized in 1995. Critical Habitat was designated for these two species on January 26, 2000 (65 FR 4140). The Virgin spinedace was proposed for listing as endangered on May 18, 1994 (59 FR 25875). The Virgin Spinedace Conservation Agreement and Strategy (VSCAS) to eliminate or reduce impacts threatening the continued existence of Virgin spinedace was finalized on April 11, 1995, and subsequently, the proposal to list was withdrawn on February 6, 1996 (61 FR 44010). All three of these fish species are endemic to the Virgin River basin through Utah, Arizona, and Nevada. The southwestern willow flycatcher is a neotropical migratory bird listed as endangered on February 27, 1995 (60 FR 10693) that seasonally occupies sites along the Virgin River and throughout the desert southwest. In addition, the Virgin River basin retains a diversity of native desert animal and plant species, many of which are declining due to impacts from human development in the area.

Despite Federal listing of two fish species, implementation of recovery actions in the Virgin River to benefit endangered fish have been minimal due to limited funding for recovery over the past 25 years. Furthermore, conflicts have arisen between water development interests and those managing for protection of native species that rely on the river environment. Specifically, contention between the local environmental community and local water developers over operations of the Quail Creek Diversion in the Virgin River near Hurricane, Utah, led to discordant relations and threats of litigation among the agencies and organizations interested in water use.

To resolve this situation, the interested entities agreed to develop the Virgin River Resource Management and Recovery Program that would provide a mechanism to prioritize, fund, and implement recovery actions while allowing water development necessary to meet human needs in the Utah portion of the Virgin River basin. It is anticipated that the Program will not only provide recovery actions that are necessary to offset impacts from proposed development actions to the native protected species, but further lead to full recovery of the endangered fish species and conservation of the Virgin spinedace, as well as provide benefits to the endangered southwestern willow flycatcher.

The Program will encompass the VRFRP and VSCAS so that actions identified in these documents can be funded, implemented, and evaluated for effectiveness. In addition, the Program will provide measures to offset proposed Federal project impacts during section 7 consultations in order to prevent future conflict over water development and minimize impacts of Federal projects on protected aquatic species. Goals and objectives of the Program are based on recovery of the endangered fish and conservation of Virgin spinedace in an environment of continuing water development. Although some impacts to native species are expected through future water development projects, recovery actions have been and will continue to be implemented in advance of project impacts such that the status of species and/or its habitat is expected to improve and remain greater than that necessary to offset anticipated impacts. A crediting system has been developed to assess, measure, and track benefits and impacts of projects and is designed to maintain measured benefits at a higher level than impacts so that the Program is always moving toward recovery and conservation of protected species.

Although participation is limited to Utah portions of the Virgin River basin at this time, it is expected that the remaining portions of the Virgin River basin in Arizona and Nevada will be invited to participate in the Program in future years, as it becomes better established and demonstrates effectiveness.

It is important to note that participation in this Program does not represent or guarantee legal authority for any water development project. Such projects must be evaluated individually as they are proposed and continue to be subject to all applicable Federal and State laws, including the National Environmental Policy Act and the Endangered Species Act. This EA is not intended to provide analysis for specific project impacts but rather analyzes only effects of Federal participation in the Program.

Author

The primary author of this notice is Yvette K. Converse, U.S. Fish and Wildlife Service, 145 East 1300 South State Street, Suite 404, Salt Lake City, Utah 84115, 801–524–5001 extension 135.

Authority

The authorities for this action are the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1532 *et seq.*).

Dated: May 30, 2001.

Duane K. McDermond,

Acting Regional Director, Denver, CO.

Finding of No Significant Impact—Federal Participation in the Virgin River Resource Management and Recovery Program

The U.S. Fish and Wildlife Service, as lead agency, with the Bureau of Land Management and National Park Service as cooperating agencies, propose to participate in the Virgin River Resource Management and Recovery Program (Program). The Program will be a multiagency program designed to implement recovery actions for two endangered fish species, the woundfin and the Virgin River chub. It also will implement conservation actions for the Virgin spinedace, a species being managed as sensitive by the State of Utah and subject of a conservation agreement. In addition to implementing recovery actions, the Program will facilitate resolution of conflicts between endangered species protection and water development in the Virgin River Basin in Utah by providing actions to improve the status of these species so that proposed water development will not jeopardize these species existence or adversely modify their critical habitat. Other Program participants will be the State of Utah Department of Natural Resources, the Washington County Water Conservancy District, and Grand Canyon Trust, a local nonprofit environmental conservation group.

An Environmental Assessment was prepared which addressed three alternatives: (A) a no action alternative whereby the Federal agencies would not participate in the Program but would continue to administer and comply with the Endangered Species Act (Act) as previously done; (B) Federal agency participation in the Program which describes a process for administration and compliance with the Act that provides for full implementation of recovery and conservation actions for the protected fish species, as well as providing a mechanism for section 7 compliance of the Act that reduces conflict in the Utah portion of the Virgin River basin; and (C) Federal agency participation in a basinwide recovery program that includes implementation of the Program in Arizona and Nevada, as well as Utah.

Alternative B, the Preferred Alternative, will result in the most effective participation by Department of the Interior agencies, State and local agencies, and organizations to coordinate, direct, and fund recovery actions for imperiled aquatic fish species in the Basin in Utah. It also will facilitate implementation of the Virgin River Resource Management and Recovery Program that was developed by resource agencies in Utah.

Based on my review and evaluation of the Environmental Assessment and supporting documentation, I have determined that Federal agency participation in the Virgin River Resource and Management Program is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement is not required.

Dated: May 30, 2001.

Duane K. McDermond,

Acting Regional Director.

References: Environmental Assessment dated May 2000; Intra-Service Section 7 Consultation

[FR Doc. 01–14863 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–017768]

Public Land Order No. 7488; Extension of Public Land Order No. 5979; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 5979 for an additional 20-year period. This extension is necessary to continue the protection of two Bureau of Land Management administrative sites. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 3, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 5979, which withdrew public lands to protect two Bureau of Land Management administrative sites, is hereby extended for an additional 20-year period following its date of expiration.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 29, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–14826 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430-ET; WYW 83357–03]

Public Land Order No. 7489; Partial Revocation of Six Secretarial Orders; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes six Secretarial Orders insofar as they affect 9,560.53 acres of public lands withdrawn for stock driveway purposes. The lands are no longer needed for the purpose for which they were withdrawn. Of the lands being revoked, 318.72 acres have been conveyed out of Federal ownership and the revocation of these lands is a record clearing action only. This action will open the remaining 9,241.81 acres to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mining location and mineral leasing.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated October 20, 1917, April 24, 1918, February 5, 1924, August 7, 1929, December 12, 1938, and May 13, 1944, which withdrew public lands for Stock Driveway Nos. 3, 14, and 128, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 44 N., R. 76 W.,
Sec. 6, lots 12 and 13.
T. 42 N., R. 77 W.,
Sec. 27, S½;
Sec. 34, N½.
T. 44 N., R. 77 W.,
Sec. 33, lot 12.
T. 42 N., R. 78 W.,
Sec. 13, SW¼.
T. 43 N., R. 78 W.,
Sec. 15, W½NW¼, SE¼NW¼, and SW¼;
Sec. 21, N½N½ and SE¼NE¼.
T. 44 N., R. 78 W.,
Sec. 6;
T. 56 N., R. 78 W.,
Sec. 11, S½SE¼.
T. 44 N., R. 79 W.,
Sec. 6, lots 4 to 7, inclusive;
Sec. 28, SE¼;
Sec. 33.
T. 45 N., R. 79 W.,
Sec. 3, SW¼, W½SE¼, and SE¼SE¼;
Sec. 25.
T. 50 N., R. 80 W.,
Sec. 6, lots 8 to 17, inclusive, and lots 19, 20, and 21.
T. 51 N., R. 80 W.,
Sec. 31, lots 5 to 11, inclusive, NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.
T. 42 N., R. 81 W.,
Sec. 10, NE¼SW¼, S½SW¼, and SW¼SE¼;
Sec. 14, NW¼NW¼;
Sec. 15, N½NE¼ and NE¼NW¼.
T. 45 N., R. 81 W.,
Sec. 8, S½NE¼, E½W½, and SE¼;
Sec. 17, N½NE¼ and NE¼NW¼.
T. 50 N., R. 81 W.,
Sec. 1, lots 1 and 2, and S½NE¼.
T. 44 N., R. 83 W.,
Sec. 33, SE¼;
Sec. 34, E½NW¼, SW¼NW¼, and SW¼.
T. 43 N., R. 84 W.,
Sec. 31, lots 5 to 11, inclusive, NE¼SW¼, and N½SE¼;
Sec. 32, lots 3 to 7, inclusive, and NW¼SW¼;
Sec. 33, lots 5 to 8, inclusive;
Sec. 34, lots 1 and 2.
T. 42 N., R. 85 W.,
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;
Sec. 5, lots 1, 2, and 3, and S½NE¼.
T. 46 N., R. 85 W.,
Sec. 6, lot 2.
T. 47 N., R. 85 W.,
Sec. 5, lots 5 to 15, inclusive;
Sec. 8, E½;
Sec. 17, E½;
Sec. 20, N½NE¼.
T. 57 N., R. 87 W.,
Sec. 19, lots 1, 3, and 4, E½SW, and SE¼;
Sec. 29, SW¼.

The areas described aggregate 9,241.81 acres in Johnson and Sheridan Counties.

2. The Secretarial Order dated October 20, 1917, which withdrew public lands for Stock Driveway No. 3, is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

T. 44 N., R. 77 W.,
Sec. 33, lot 11 and SE¼SW¼.
T. 50 N., R. 80 W.,
Sec. 6, NW¼SE¼.
T. 57 N., R. 87 W.,
Sec. 19, lot 2, W½NE¼ and E½NW¼.

The areas described aggregate 318.72 acres in Johnson and Sheridan Counties.

The total areas described in paragraphs 1 and 2 aggregate 9,560.53 acres in Johnson and Sheridan Counties.

3. At 9 a.m. on July 13, 2001, the lands described in paragraph 1 shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 13, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The lands described in paragraph 2 has been conveyed out of Federal ownership. This is a record clearing action only.

Dated: May 29, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–14827 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

San Francisco National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Department of Interior.

Agenda for the July 11, 2001 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park; Building C Room 210, Lower Fort Mason Center, 10:00 AM–12:30 PM.

10:00 AM
Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman
Approval of Minutes from Previous Meeting
10:15 AM
William Thomas, Superintendent
10:30 AM
C. A. Thayer, status
Michael Bell, Project Officer
10:45 AM
Haslett Visitor Center
Marc Hayman, C, Interpretation & Resource Management
11:15 AM
Sips Preservation Report
Wayne Boykin, Ships Manager
11:30 AM
Update on SFMNPA
Kathy Lohan, Executive Officer
12:00 PM
Public Comments and Questions
12:15 PM
Agenda items/Date for next meeting

William G. Thomas,

Superintendent.

[FR Doc. 01–14810 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–402 (Final) and 731–TA–892–893 (Final)

Honey From Argentina and China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–402 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–892–893 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Argentina and less-than-fair-value imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey Clark (202–205–3205), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Argentina of honey, and that honey from Argentina and China is being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 29, 2000, by the American Honey Producers Association, Bruce, South Dakota, and the Sioux Honey Association, Sioux City, Iowa.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 24, 2001, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 25, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 17, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 20, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is September 13, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules.

The deadline for filing posthearing briefs is October 4, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 4, 2001. On October 23, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 25, 2001, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize

[1] For purposes of these investigations, the Department of Commerce has defined the subject products as ''natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.''

filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.
Issued: June 8, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–14889 Filed 6–12–01; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability (NCD). Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (Pub. L. 94–409).

QUARTERLY MEETING DATES: August 6–7, 2001, 8:30 a.m. to 5:00 p.m.

LOCATION: Marriott Hotel at Metro Center, 775 12th Street, NW, Washington, DC; 202–737–2200.

CONTACT INFORMATION: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at the meeting. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings unless requested to do so by an NCD member and recognized by the NCD chairperson.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director

Committee Meetings and Committee Reports

Executive Session (closed)

Unfinished Business

New Business

Announcements

Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on June 8, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–15033 Filed 6–11–01; 1:33 pm]

BILLING CODE 6820–MA–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review to the Office of Management and Budget (Reinstatement of OMB Control Number 0420–0525).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collection, OMB Control Number 0420–0525, the Peace Corps Fellows/USA Program Alumni Questionnaire form to be used by the Peace Corps Fellows/USA Program. This is a reinstatement, with change, of a previously approved collection for which approval has expired. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the proposed information collection form may be obtained from Dr. Cathryn Ballou, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW, Room 2101, Washington, DC 20526. Dr. Ballou can be contacted by telephone at 202–692–1432 or 800–424–8580 ext 1432. Comments on the form should also be addressed to the attention of Dr. Ballou and should be received on or before August 13, 2001.

Information Collection Abstract

Title: Peace Corps Fellows/USA Program Alumni Questionnaire.

Need for and Use of this Information: This form is completed voluntarily by returned Peace Corps Volunteers who have completed graduate study as part of the Peace Corps Fellows/USA Program. The information provided by the respondents is necessary for evaluating the quality of individual programs, for determining whether graduates education programs have remained in teaching, health and/or

community/economic development careers and for seeking future funding. Programmatic information will be disseminated to individual programs and portions of the data collected will be incorporated into grant proposals and reports. Participation in this program also fulfills the third goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Fellows/USA Program.

Respondents: Returned Peace Corps Volunteers (Peace Corps Fellows/USA Program Alumni) only.

Respondent's Obligation to Rely: Voluntary.

Burden on the Public

a. Annual reporting burden: 250 hours.

b. Annual record keeping burden: 0 hours.

c. Estimated average burden per response: 30 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 500.

f. Estimated cost to respondents: $7.24.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC, on June 1, 2001.

Doug Warrecke,

Acting, Chief Information Officer and Associate Director for Management.

[FR Doc. 01–14887 Filed 6–12–01; 8:45 am]

BILLING CODE 6051–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Investigation of Claim for Possible Days of Employment.

(2) *Form(s) submitted:* ID–5S(SUP).

(3) *OMB Number:* N/A.

(4) *Expiration date of current OMB clearance:* N/A.

(5) *Type of request:* New.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 80.

(8) *Total annual responses:* 80.

(9) *Total annual reporting hours:* 13.

(10) *Collection description:* Under the Railroad Unemployment Insurance Act, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection will obtain information about compensation credited to an employee during a period when the employee claimed unemployment or sickness benefits from their railroad employer.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB review, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–14888 Filed 6–12–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–5 and Form X–17A–5, SEC File No. 270–155, OMB Control No. 3235–0123

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–5 under the Securities Exchange Act of 1934 is the basic reporting rule for brokers and dealers, and Form X–17A–5, the Financial and Operational Combined Uniform Single Report, is the basic document for reporting the financial and operational condition of securities brokers and dealers.

The staff estimates that approximately 7,230 respondents respond to this collection of information 33,870 times annually, with a total burden of 12 hours for each response, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 17a–5 is 406,440 hours. The average cost per hour is $113. Therefore, the total cost of compliance for the respondents is $45,927,720.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 5, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–14869 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ac1–4, SEC File No. 270–405, OMB Control No. 3235–0462

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*, the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–4 [17 C.F.R. 240.11Ac1–4] under the Securities Exchange Act of 1934 requires specialists and market makers to publicly display a customer

limit order when that limit order is priced superior to the quote that is currently being displayed by the specialist or market maker. Customer limit orders that match the bid or offer being displayed by the specialist or market maker must also be displayed if the limit order price matches the national best bid or offer. It is estimated that approximately 926 broker and dealer respondents incur an aggregate burden of 9,056 hours per year to comply with this rule.

Rule 11Ac1–4 does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: June 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–14871 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15a–6, SEC File No. 270–329, OMB Control No. 3235–0371

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a–6 under the Securities Exchange Act of 1934 provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities.

In general, the records to be maintained under Rule 15a–6 must be kept for the applicable time periods as set forth in Rule 17a–4 under the Exchange Act or, with respect to the consents to service of process, for a period of not less than six years after the applicable person ceases engaging in U.S. securities activities. Reliance on the exemption set forth in Rule 15a–6 is voluntary, but if a foreign broker-dealer elects to rely on such exemption, the collection of information described therein is mandatory. The collection does not involve confidential information. It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. At an average cost per hour of approximately $100, the resultant total cost of compliance for the respondents is $600,000 per year (2,000 entities × 3 hours/entity × $100/hour = $600,000).

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

Written comments regarding the above information should be directed to the following persons: (a) Desk Office of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (b) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–14870 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44396; File No. 10–131]

The Nasdaq Stock Market, Inc.; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

June 7, 2001.

The Nasdaq Stock Market, Inc. (''Nasdaq'') completed its application for registration as a national securities exchange (''Form 1'') under section 6 [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') and submitted it to the Securities and Exchange Commission (''SEC'' or ''Commission'') on March 15, 2001.[2] The Commission is publishing this notice to solicit comments on Nasdaq's Form 1.

I. Background

Until recently, Nasdaq was a wholly-owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD''). On April 14, 2000, NASD members voted in favor of a restructuring plan that broadens the ownership of Nasdaq through a two-phase, private placement of common stock and warrants to include not only NASD members, but also Nasdaq issuers, institutional investors and strategic partners. In the first phase of the private placement, which was completed in June 2000, the NASD sold shares and issued warrants overlaying

[1] 15 U.S.C. 78(f).

[2] *See* Letter to Annette L. Nazareth, Director, Division of Market Regulation (''Division''), Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated November 9, 2000. Exhibits A and C to Nasdaq's application were incomplete, and therefore on March 15, 2001, Nasdaq submitted to the Commission revised Exhibits A and C to address the deficiencies. As a result, Nasdaq's Form 1 was completed and officially filed with the Commission on March 15, 2001.

shares of Nasdaq it owned, and Nasdaq also issued and sold additional shares. As a result, the NASD's ownership interest in Nasdaq was reduced from 100% to 60%. The second phase of the private placement was completed on January 18, 2001, and as a result the NASD's ownership interest in Nasdaq was further reduced to 40%.[3]

Nasdaq currently is operated by the NASD pursuant to a Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries as approved by the Commission.[4] Until approval of Nasdaq's exchange registration, the shares of common stock underlying unexercised and unexpired warrants, as well as the shares of common stock purchased through the valid exercise of warrants, will be voted by a trustee at the direction of the NASD. Thus, even though the NASD has divested itself of its ownership interest and currently does not own a controlling interest in Nasdaq, the NASD nonetheless exercises effective control over Nasdaq through voting until the Commission approves Nasdaq's exchange registration.

II. Nasdaq's Exchange Registration

Nasdaq currently is exempt from the definition of ''exchange'' under Rule 3a1–1 because it is operated by the NASD.[5] Before the NASD may relinquish control, Nasdaq must register as a national securities exchange.[6] Accordingly, Nasdaq has filed a complete Form 1, including all of the required exhibits, to register as a national securities exchange.

The Form 1 provides detailed information about Nasdaq and how it proposes to satisfy the requirements of the Exchange Act. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to Nasdaq are satisfied.[7] There are a number of implications to Nasdaq's separation from the NASD and application to register and operate as an exchange. For example, Nasdaq will have to demonstrate that it has the capacity to comply, and enforce compliance by its members, with the Exchange Act and its own rules.[8] In addition, while members of a national securities association are not subject to section 10(a)[9] when trading Nasdaq stocks, if the Commission approves Nasdaq's registration as an exchange, Section 10(a) will apply to such trading. Moreover, while Nasdaq members are not subject to section 11(a)[10] of the Exchange Act for their Nasdaq transactions, they would be subject to section 11(a) if Nasdaq becomes an exchange. Furthermore, while the Form 1 contemplates that Nasdaq will be an exchange trading Nasdaq National Market securities and Nasdaq SmallCap securities, the future operation of the Over-the-Counter Bulletin Board must be addressed. Before Nasdaq can register as a national securities exchange, it must be able to satisfy its obligations under section 11A[11] of the Act. Finally, Nasdaq's exchange registration has implications for the NASD which, as a national securities association, will continue to be required to collect bids, offers and quotation sizes for those entities seeking to trade listed securities, including Nasdaq securities, otherwise than on a national securities exchange.[12] The Commission notes that the NASD's quotation and transaction reporting facility must be operational upon Nasdaq's exchange registration.

III. Solicitation of Comments

A complete copy of Nasdaq's Form 1 is available in the Commission's Public Reference Room, File No. 10–131. Portions of Nasdaq's Form 1, including Nasdaq's rules, also are available on the Commission's website at *http:/ www.sec.gov/rules/other.shtml*. Interested persons should submit three copies of their written data, views and opinions on Nasdaq's Form 1 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* Comments must be received on or before July 30, 2001. All comment letters should refer to File No. 10–131; this file number should be included on the subject line if comments are submitted using E-mail. The Commission requests that commenters focus on issues raised in Nasdaq's Form 1, File No. 10–131, when submitting comments in response to this notice. Commenters wishing to address another specific rule filing by the NASD pending with the Commission should direct their comments to that specific rule proposal. Copies of all submissions, amendments, and all written statements will be available for public inspection and copying at the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).

For questions regarding this release, contact Rebekah Liu, Special Counsel, at (202) 942–0133; Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549–1001.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–14831 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–U

[3] For both phases of the private placement, the NASD's percentage ownership of Nasdaq assumes that all warrants sold are fully exercised. Recently, Nasdaq also announced an agreement to sell subordinated debentures convertible into Nasdaq common stock to a private equity firm. If fully converted, this private equity firm would own approximately 9.8% of Nasdaq common stock. The Division currently is considering changes to Nasdaq's Certificate of Incorporation that would be necessary to consummate the sale of these debentures.

[4] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996).

[5] Pursuant to Rule 3a1–1, an organization, association, or group of persons shall be exempt from the definition of ''exchange'' if it is operated by a national securities association. Unless another exemption from the definition of ''exchange'' applies, such organization, association, or group of persons that otherwise meets the definition of an ''exchange'' must register as such with the Commission. 17 CFR 240.3a1–1.

[6] The voting trust will automatically expire and the NASD will no longer control or operate Nasdaq upon Nasdaq's registration as an exchange.

[7] Section 19(a) of the Exchange Act, 15 U.S.C. 78(s)(a).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78j(a).

[10] 15 U.S.C. 78k(a).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Ac1–1(b)1(ii).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24999; 812–12406]

AB Funds Trust, *et al.;* Notice of Application

June 7, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under: (a) Section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 12(d)(1) of the Act; sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions; (b) section 12(d)(1)(J) of the Act requesting an exemption from section 12(d)(1)(G)(i)(II) of the Act; (c) sections 6(c), 10(f) and 17(b) of the Act requesting an exemption from sections 17(a), 17(e), 10(f) and 12(d)(3) of the Act and rule 17e-1 under the Act; and (d) section 17(b) of the Act requesting an exemption from section 17(a) of the Act.

Summary of the Application: Applicants seek an order to permit certain common trust funds to transfer their assets to certain series of a registered open-end management investment company in exchange for shares of the series, and to permit certain series of the open-end management investment company (a) to invest cash reserves in an affiliated money market fund; (b) to operate as funds of funds, investing a portion of their assets directly in securities; and (c) advised by several investment advisers, to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers or to purchase securities in certain underwritings. The transactions would be between a broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3-1 under the Act.

Applicants: AB Funds Trust (''Trust''), Annuity Board of the Southern Baptist Convention (''Annuity Board'') and SBC Financial Services, Inc. (''Adviser'').

Filing Dates: The application was filed on January 12, 2001 and amended on June 7, 2001. Applicants have agreed to file another amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 2001 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Rodney R. Miller, Esq., Annuity Board of the Southern Baptist Convention, 2401 Cedar Springs Road, Dallas, Texas 75201–1407.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (tel. (202) 942–8090).

Applicants' Representations

A. Overview

1. The Annuity Board is a Texas non-profit corporation that sponsors and maintains retirement and welfare benefit plans (''plans'') for the employees of churches and organizations controlled by, or associated with, the Southern Baptist Convention (''SBC''). The plans invest primarily in four Southern Baptist investment funds (''BIFs'') and nine Southern Baptist investment pools (''BIPs''), all of which are maintained by the Annuity Board. The BIFs allocate investments among the BIPs to achieve an asset allocation that is appropriate to each BIF's investment strategy, generally balancing fixed income and equity exposure in proportion to a BIF's risk level. The BIFs and the BIPs are managed in accordance with the moral and ethical principles of the SBC and are exempt from registration as investment companies pursuant to section 3(c)(14) of the Act.

2. The Annuity Board has been charged with providing an expanded range of investment opportunities to Southern Baptist organizations and to persons eligible to participate in the plans provided by the Annuity Board. These expanded services, which would not be consistent with maintenance of the BIPs' and BIFs' exemption from registration under the Act, will be provided by the Trust.

3. The Trust, established as a Delaware business trust, will register under the Act as an open-end management investment company. The Trust will have thirteen series (collectively, the ''Funds''). Four of the Funds will operate as funds of funds pursuant to Section 12(d)(1)(G) under the Act (the ''Blended Funds''). The Blended Funds will allocate their investments among the nine other Funds (the ''Select Funds''). Investors may also purchase shares of the Select Funds directly.

4. The Adviser, a controlled affiliate of the Annuity Board, will act as investment adviser to the Trust, and will register as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), prior to serving as investment adviser to the Trust. With the exception of two Funds, at least two subadvisers will exercise discretion over each Select Fund's assets (''Subadvisers''). Each Subadviser will be registered, or exempt from registration, under the Advisers Act. The Board of Trustees of the Trust (''Board'') will have overall responsibility for the management of the Funds.

5. The Annuity Board proposes to transfer the assets of the BIPs and the BIFs to the corresponding Select Funds and the Blended Funds, in exchange for shares of those Funds (the ''Transfer''). Following the Transfer, the BIPs and BIFs will terminate. Applicants request an order under the Act to permit the Transfer and exemptions from certain provisions of the Act relating to the operation of the Trust. Applicants request that the relief (except the relief relating to the Transfer) apply to any future series of the Trust and to any future registered open-end management investment company advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser.[1]

B. Investment of Cash Reserves in the Money Market Fund

1. Other than the Select Fund that is a money market Fund that complies with rule 2a–7 under the Act (''Money Market Fund''), each Select Fund (an ''Investing Select Fund'') has, or may be expected to have, cash balances that have not been invested in portfolio securities (''Cash Reserves''). The Cash Reserves may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions or dividend payments, and new cash received from investors.

2. Applicants request an order to permit the Investing Select Funds to invest their Cash Reserves in shares of the Money Market Fund and to permit the Money Market Fund to sell its

[1] Applicants state that any entity that currently intends to rely on the exemptive order requested is named as an applicant and that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

shares to, and redeem such shares from, the Investing Select Funds. The investment by each Investing Select Fund in shares of the Money Market Fund will be made in accordance with that Investing Select Fund's investment policies and restrictions as set forth in its registration statement.

C. Funds of Funds

Each Blended Fund proposes to invest in shares of the Select Funds while also investing a portion of its assets directly in exchange listed equity futures contracts and exchange listed U.S. Treasury futures contracts. Applicants request an exemption pursuant to Section 12(d)(1)(J) of the Act from Section 12(d)(1)(G)(i)(II) of the Act to the extent necessary to permit each of the Blended Funds, which will otherwise operate pursuant to Section 12(d)(1)(G) of the Act, to make such direct investments. These direct investments will not include shares of any investment companies.

D. Transactions Involving Funds With Multiple Subadvisers

1. With the exception of two Select Funds, each of the Select Funds will have more than one Subadviser. Each Subadviser will exercise discretion to purchase and sell securities for a discrete portion of a Select Fund's assets (each portion, a ''Segment'') in accordance with the Select Fund's objectives, policies and restrictions. Each Subadviser is paid directly by the Select Fund it advises, based on a percentage of the value of the Select Fund's assets allocated to its management. The Adviser also may directly advise a Segment of a Select Fund.

2. Applicants request an exemption to permit: (a) Any broker-dealer registered under the Securities Exchange Act of 1934 (the ''1934 Act'') that itself serves as Subadviser (either directly or through a separate operation division) (''Affiliated Subadviser'') or is an affiliated person of a Subadviser to a Segment of a Select Fund (''Affiliated Broker-Dealer'') to engage in principal transactions with a Segment of the Select Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or the Affiliated Subadviser (an ''Unaffiliated Subadviser'') (each such Segment, an ''Unaffiliated Segment'');[2] (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Segment, and the Unaffiliated Segment to utilize such brokerage services, without complying with rule 17e–1(b) and (c) under the Act; (c) an Unaffiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (an ''Affiliated Underwriter''); (d) a Segment advised by an Affiliated Subadviser (''Affiliated Segment'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment, and (e) an Unaffiliated Segment to purchase securities issued by an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser engaged in securities-related activities (''Securities Affiliate''), within the limits of rule 12d3–1 under the Act.

E. The Transfer

Applicants request an exemption, pursuant to section 17(b) of the Act, from section 17(a) to permit the following proposed transactions constituting the Transfer: (a) Each BIP will transfer its assets to a corresponding Select Fund in exchange for shares of the Select Fund and then distribute the Select Fund shares, pro rata, to its shareholders; and (b) each BIF will transfer its assets to a corresponding Blended Fund in exchange for shares of the Blended Funds and then distribute shares of the Blended Funds pro rata to its shareholders.

Applicants' Legal Analysis

A. Investment of Cash Reserves by the Investing Select Funds in the Money Market Fund

1. Section 12(d)(1) of the Act

a. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

b. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) of the Act to permit the Investing Select Funds to purchase shares of the Money Market Fund in excess of the limits of section 12(d)(1)(A) and the Money Market Fund to sell its shares to the Investing Select Funds in excess of the limits of section 12(d)(1)(B).

c. Applicants maintain that the proposed transactions will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Applicants state that the Money Market Fund will be managed specifically to maintain a highly liquid portfolio, and access to it will enhance each Investing Select Fund's ability to manage Cash Reserves. Applicants state that there will not be an inappropriate layering of fees because shares of the Money Market Fund sold to or redeemed by the Investing Select Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or a service fee. Applicants state that if the Money Market Fund shares were subject to such fees, the Adviser will waive its advisory fee for each Investing Select Fund in an amount that offsets the amount of the fees. In addition, in connection with approving an investment advisory contract under section 15 of the Act, the Board of the Investing Select Fund will consider to what extent the advisory fee paid by the Investing Select Fund to the Adviser should be reduced as a result of the Cash Reserves being invested in the Money Market Fund. Each Investing Select Fund also will invest Cash Reserves in the Money Market Fund only to the extent that the Investing Select Fund's aggregate investment of Cash Reserves in the Money Market Fund does not exceed 25% of the Investing Select Fund's total assets. Applicants also state that the Money

[2] The terms ''Unaffiliated Subadviser,'' ''Subadviser,'' and ''Unaffiliated Segment'' include the Adviser and the Segment of a Select Fund directly advised by the Adviser, respectively, provided that the Adviser manages its Segment of the Select Fund independently of the Segments managed by the other Subadvisers to the Select Fund, and the Adviser does not control or influence any other Subadviser's investment decisions for its Segment of the Select Fund. The Adviser does not currently manage any Select Fund.

Market Fund will not acquire securities of any investment company in excess of the limits of section 12(d)(1)(A) of the Act.

2. Section 17(a) of the Act

a. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

b. Because the Adviser will serve as each Select Fund's investment adviser, the Funds may be deemed to be under common control and therefore affiliated persons, or affiliated persons of an affiliated person, of each other. In addition, the Funds could be deemed to be under common control by virtue of the fact that they share a common Board. In addition, if an Investing Select Fund purchases more than 5% of the outstanding voting securities of the Money Market Fund, the Investing Select Fund and Money Market Fund would be affiliated persons of each other. Accordingly, applicants state that the sale and redemption of shares of the Money Market Fund by the Investing Select Fund may be prohibited by section 17(a).

c. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions, from the provisions of the Act to the extent that such exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

d. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Select Funds to purchase and redeem shares of the Money Market Fund. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b) of the Act. Applicants state that the consideration paid and received on the sale and redemption of shares of the Money Market Fund will be based on the current net asset value per share of the Money Market Fund. Applicants also state that the Investing Select Funds will retain their ability to invest their Cash Reserves directly in money market instruments and other short-term instruments if they can obtain a higher rate of return or for any other reason. The Money Market Fund also reserves the right to discontinue selling shares to any of the Investing Select Funds if the Board determines that the sales would adversely affect the Money Market Fund's management and operations. In addition, applicants state that the investment of Cash Reserves of the Investing Select Funds in shares of the Money Market Fund will be effected in accordance with each Investing Select Fund's investment restrictions and will be consistent with each Investing Select Fund's policies as set forth in its registration statement.

3. Section 17(d) of the Act and Rule 17d–1 under the Act

a. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission has approved the joint arrangement by an order. Applicants state that each Investing Select Fund and the Money Market Fund, by participating in the proposed transactions, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise for the purposes of section 17(d) of the Act and rule 17d–1 under the Act.

b. In passing on applications for orders under section 17(d), rule 17d–1 requires that the Commission consider whether an investment company's participation in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that the proposed transactions meet the standards for an order under rule 17d–1. Applicants state that the investment by the Investing Select Funds of Cash Reserves in shares of the Money Market Fund would be on the same basis and would be indistinguishable from any other shareholder account maintained by the Money Market Fund. The proposed transactions will provide the potential for increased returns and reduced costs and reduced risks for the Investing Select Funds and their shareholders and are consistent with the policies and purposes of the Act.

B. Investment by the Blended Funds in the Select Funds

1. Section 12(d)(1)(G) of the Act provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company acquired by a registered open-end investment company if: (i) The acquiring company and the acquired company are part of the same group of investment companies, (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed investment by the Blended Funds in the Select Funds would comply with the provisions of section 12(d)(1)(G), but for the fact that each Blended Fund's policies contemplate that it may invest a portion of its assets directly in securities other than those specified in section 12(d)(1)(G)(i)(II).

2. Applicants request an exemption under section 12(d)(1)(J) of the Act from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Blended Funds to invest directly in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G)(i)(II) were designed to address.

C. Transactions Involving Funds With Multiple Subadvisers

1. Principal Transactions Between an Unaffiliated Segment and an Affiliated Broker-Dealer

a. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated

person of an affiliated person, promoter, or principal underwriter. Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants assert that an Affiliated Subadviser would be an affiliated person of a Select Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser, and thus an affiliated person of an affiliated person (''second-tier affiliate'') of a Select Fund, including the Unaffiliated Segment. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Segment of a Select Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

b. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment of a Select Fund solely because an Affiliated Subadviser is the Subadviser to another Segment of the Select Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser making the investment decision or any officer, director or employee of the Select Fund.

c. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Segment in principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets of the Segment allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Segment would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated segment.

d. Applicants state that each Subadviser's contract assigns it responsibility to manage a Segment of the Select Fund and that each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants represent that the Adviser does not dictate brokerage allocation or investment decisions to any Select Fund advised by a Subadviser, or have the contractual right to do so, except with respect to a Segment advised directly by the Adviser. Applicants contend that, in managing a discrete Segment of a Select Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

e. Applicants state that the proposed transactions will be consistent with the policies of the Select Fund involved, since each Unaffiliated Subadviser is required to manage the Unaffiliated Segment in accordance with the investment objectives and related investment policies of the Select Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Select fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

Payment of Brokerage Compensation by an Unaffiliated Segment to an Affiliated Broker-Dealer

a. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

b. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another segment of a Select Fund) or a second-tier affiliate of an Unaffiliated Segment and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e–1 to the extent necessary to permit an Unaffiliated Segment to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Segment, without complying with the requirements of rule 17e–1 (b) and (c). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Segment solely because an Affiliated Subadviser is the Subadviser to another Segment of the same Select Fund. The relief would not apply if the Affiliated Broker-Dealer (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser to the Unaffiliated Segment of the Select Fund, or any officer, director or employee of the Select Fund.

c. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants state that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Segment it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a) under the Act. Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Segment.

3. Purchases of Securities from Offerings with an Affiliated Underwriter

a. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a

security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of those persons. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

b. Applicants state that each Subadviser to a Select Fund, although under contract to manage only a distinct Segment of the Select Fund, is considered an investment adviser to the entire Select Fund. As a result, applicants, state that all purchases of securities by an Unaffiliated Segment from an underwriting syndicate a principal underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

c. Applicants request relief under section 10(f) from section 10(f) to permit an Unaffiliated Segment to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Select Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as Subadviser) is an affiliated person or a second-tier affiliate of the Adviser, principal underwriter or promoter of the Trust, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Segment of the Select Fund, or any officer, director, or employee of the Select Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Segment to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Segment with purchases by an Unaffiliated Segment.

d. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Select Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers to the same Select Fund, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

4. Purchases of Securities Issued by a Securities Affiliate

a. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, ''securities-related activities''). Applicants assert that because a Securities Affiliate is engaged in securities-related activities, an Unaffiliated Segment of a Select Fund advised by an Unaffiliated Subadviser would be prohibited by section 12(d)(3) from purchasing the securities issued by the Securities Affiliate.

b. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

c. Applicants state that each Subadviser to a Segment is considered to be an investment adviser to the entire Select Fund. Thus, applicants state that a purchase by an Unaffiliated Segment of securities issued by a Securities Affiliate would not meet rule 12d3–1(c) and that applicants are therefore unable to rely on the rule.

d. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Segment to purchase securities issued by a Securities Affiliate, provided that all of the requirements of rule 12d3–1, except rule 12d3–1(c), are met. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Segment. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment and brokerage allocation decisions for the assets allocated to its Segment and that Unaffiliated Subadvisers have no economic incentive to purchase shares of a Securities Affiliate other than to increase the value of the Unaffiliated Segment or Select Fund for the benefit its shareholders. Applicants state that the requested relief would not extend to securities issued by the Subadviser making the purchase, the Adviser, a principal underwriter or promoter of the Trust or to any affiliated person of these entities. Applicants assert that prohibiting an Unaffiliated Segment of a Select Fund from purchasing securities issued by a Securities Affiliate may cause Unaffiliated Subadvisers to forego investment opportunities that would be in the best interests of the Funds' shareholders.

D. The Transfer

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly (a) to sell any security or other property to such registered investment company, or (b) to purchase from such registered investment company any security or other property. Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include (a) any person owing, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person controlling, controlled by, or under common control with, any investment adviser thereof.

2. Because the BIPs might be viewed as acting as principal in the Transfer, and because the BIPs and the Funds might be viewed as being under common control of the Annuity Board within the meaning of section 2(a)(3) of the Act, the Transfer may be subject to the prohibitions of section 17(a).

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirement, that the transaction

involves a cash payment against prompt delivery of the security. The relief provided by rule 17a–7 may not be available for the Transfer because the ownership of 5% or more of the outstanding voting shares of the Funds by the Annuity Board may create an affiliation ''not solely by reason of'' having a common investment adviser, common directors, and/or common officers. In addition, the Transfer will be effected on a basis other than cash.

4. Rule 17a–8 exempts mergers, consolidations, and assets sales of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each affiliated investment company make certain determinations that the transactions are fair. The relief provided by rule 17a–8 may not be available for the Transfer because the BIPs are not registered investment companies. In addition, the relief provided by rule 17a–8 may not be available for the Transfer because the ownership of 5% or more of the outstanding voting shares of the Funds by the Annuity Board may create an affiliation ''not solely by reason of'' having a common investment adviser, common directors, and/or common officers.

5. Applicants seek an order under section 17(b) to allow the Transfer. Applicants submit that the Transfer satisfies the standard for relief under section 17(b). Applicants state that the Transfer will comply with rule 17a–7(b) through (f) and any applicable no-action letters.

6. The Transfer is designed to provide the current BIP and BIF participants substantially the same assets and investment vehicles currently available to them, but in a registered investment company structure. Applicants state that the assets of the BIPs to be transferred to the Select Funds will be valued in accordance with the provisions of rule 17a–7(b) under the Act. The BIP corresponding to the Money Market Fund will value its assets in accordance with rule 2a–7 under the Act. The transfer of Select Fund shares by the BIFs to the Blended Funds in exchange for Blended Funds' shares will be made at the net asset value of the Select Funds' and Blended Funds' shares determined in accordance with the Act. The transactions will occur simultaneously and will involve no brokerage commissions, fees or other expenses, other than customary transfer fees.

7. Applicants state that the Transfer will not occur unless the Board, including a majority of the Trustees who will not be ''interested trustees'' as defined in section 2(a)(19) of the Act (the ''Disinterested Trustees''), has determined that participation by the Funds in the Transfer is in the best interests of each Fund and its shareholders and that the interests of existing shareholders of the Funds will not be diluted as a result of the Transfer.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. Investment of Cash Reserves in the Money Market Fund

1. Investment in shares of the Money Market Fund will be in accordance with each Investing Select Fund's policies as set forth in its prospectus and statement of additional information.

2. The shares of the Money Market Fund sold to and redeemed from the Investing Select Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Select Fund in an amount that offsets the amount of such fees incurred by the Investing Select Fund.

3. Prior to reliance on the requested order by any Investing Select Fund, the Board will hold a meeting for the purpose of voting on the Advisory Agreement. Before approving the advisory contract, the Board, including a majority of the Disinterested Trustees, will consider to what extent, if any, the advisory fees charged to an Investing Select Fund by the Adviser should be reduced to account for the reduced services provided to the Investing Select Fund by the Adviser as a result of Cash Reserves being invested in the Money Market Fund. The Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the Cash Reserves of the Investing Select Fund that can be expected to be invested in the Money Market Fund. The minute books of the Investing Select Fund will fully record the Board's consideration in approving the advisory contract, including the fees referred to above.

4. Each Investing Select Fund will invest Cash Reserves in, and hold shares of, the Money Market Fund only to the extent that the Investing Select Fund's aggregate investment of Cash Reserves in the Money Market Fund does not exceed 25% of the Investing Select Fund's total assets. For purposes of this limitation, each Investing Select Fund will be treated as a separate investment company.

5. Each Investing Select Fund, the Money Market Fund, and any future registered open-end investment company that may rely on the order, will be part of the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act and will be advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser.

6. The Money Market Fund will not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. The Blended Funds

1. Before approving any advisory contract under section 15 of the Act, the Board, including a majority of the Disinterested Trustees, will find that advisory fees, if any, charged under the contract with a Blended Fund are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any underlying Select Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Blended Funds.

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts a Blended Fund from investing directly in securities as described in the application.

C. Transactions Involving Funds With Multiple Subadvisers

1. Each Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter of Securities Affiliate (except by virtue of serving as Subadviser to a Segment of a Fund) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, any principal underwriter or promoter of a Select Fund, or any officer, director, or employee of a Select Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadvisers concerning allocation of principal or brokerage transactions or concerning the purchase

of securities issued by Securities Affiliates. Subadvisers may consult with the Adviser in order to monitor regulatory compliance, including compliance with the limits of rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Segment of a Select Fund during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 under the Act will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Segment of the Select Fund with purchases by an Unaffiliated Segment.

6. Each Select Fund will comply with rule 12d3–1, except paragraph (c) of that rule solely with respect to purchases by an Unaffiliated Segment of a Select Fund of securities issued by a Securities Affiliate that would be prohibited by rule 12d3–1 solely because the Securities Affiliates is an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser to an Affiliated Segment of the Select Fund.

D. The Transfer

1. The Transfer will comply with rule 17a–7(b) through (f) and any relevant Commission staff no-action positions.

2. The Transfer will not occur unless and until the Board, including a majority of the Disinterested Trustees, finds that participation by each Select Fund and each Blended Fund in the Transfer is in the best interest of each Select Fund and each Blended Fund and their shareholders and that the interests of any existing shareholders of each Select Fund and each Blended Fund will not be diluted as a result of the Transfer. These findings, and the basis upon which they are made, will be recorded in the minute books of the Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–14872 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44392; File No. SR–CHX–2001–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending Its Membership Dues and Fees Schedule

June 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the ''Schedule''), effective June 1, 2001, to begin rebilling member firms for execution quality reports prepared by third parties pursuant to Rule 11 Ac1–5[3] (the ''Rule'') under the Act and to increase the earned credits available through the specialist credit program. Below is the text of the proposed rule change; proposed additions are italicized and proposed deletions are [bracketed].

* * * * *

MEMBERSHIP DUES AND FEES

* * * * *

H. Equipment, Information Services and Technology Charges

* * * * *

Execution quality reports prepared by third parties

Rebilled at cost.

* * * * *

M. Credits

1. Specialist Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (*and specialists will be paid each month for any unused credits* [but to no less than zero]) by the application of the following credits:

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule in two ways. First, the proposal would assess a new fee that reimburses the Exchange for its cost in procuring execution quality reports pursuant to the Rule[4] that are prepared by third parties. The Exchange currently is compiling and making public, at no cost to its member firms, the data required by the Rule. From time to time, however, the Exchange contracts with third parties to provide separate execution quality reports for its member firms. Through this proposal, the Exchange proposes to pass the cost of these reports on to the members that receive them.

Second, the proposed rule change would revise the specialist credit program to provide that the Exchange will pay specialists for any unused credits that they earn each month. The CHX represents that this credit program is designed to stimulate growth on the Exchange, exchange the competitive capability of specialist firms, and foster cooperation on the Exchange's trading floor by rewarding specialists for their work to increase Exchange revenue.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11 Ac1–5.

[4] Generally, the Rule seeks to improve the ability of public investors to evaluate how their orders are handled after being submitted to a broker-dealer for execution. The Rule requires market centers that trade national market system securities to prepare and make publicly available standardized, monthly reports containing statistical information concerning the handling and execution of their covered orders. To facilitate cross-market comparisons, the Rule established and defines uniform measures to execution quality, including effective spread, rate of price improvement and disimprovement, fill rate, and execution speed.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[5] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[6] and Rule 19b–4(f)(2) thereunder,[7] in that it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning for foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–12 and should be submitted by July 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–14873 Filed 6–12–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFT 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12)

SMALL BUSINESS ADMINISTRATION

Office of the National Ombudsman; National Regulatory Fairness Board; Public Meeting

The U.S. Small Business Administration, Office of the National Ombudsman, National Regulatory Fairness Board will hold a public meeting on Monday, June 18, 2001, from 9 a.m. to 5 p.m. EST and Tuesday June 19, 2001, from 9 a.m. to 11 a.m. at the Crystal City Marriott (1999 Jefferson Davis Highway, Arlington, VA 22202) to discuss such matters as may be presented by Acting National Ombudsman, Dr. James Van Wert, Members of the Regulatory Fairness Board, staff of the Small Business Administration or others present. Anyone wishing to make an oral presentation to the Board must contact Dr. Van Wert, in writing by letter or fax no later than June 15, 2001, in order to be put on the agenda. For further information, please write or call James Van Wert, Designated Federal Official, U.S. Small Business Administration, 409 3rd Street, SW, Seventh Floor, Washington, DC 20416. Telephone number (202) 205–7024, Fax (202) 205–6066.

Nancyellen Gentile,

Committee Management Officer.

[FR Doc. 01–14883 Filed 6–12–01; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–9009]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0073

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to OMB for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before July 13, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street N.W., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICR is available for inspection and copying in public docket USCG 2001–9009 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [66 FR 15519 (March 19, 2001)] the 60-day notice required by OMB. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's

estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2001–9009. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 and 89.

OMB Control Number: 2115–0073.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, operators, builders, and agents of vessels.

Forms: This collection of information does not require the public to fill out Coast Guard forms, but does require operators, owners, builders, or agents of a vessel of special construction to apply by letter for approval that alternative compliance is justified.

Abstract: The information collected provides an opportunity for the owner, operator, builder, or agent of a unique vessel to present her or his reasons why the vessel cannot comply with existing International or Inland Navigation Rules and how it might achieve alternative compliance. If one is appropriate, the Coast Guard issues a Certificate of Alternative Compliance.

Annual Estimated Burden Hours: The estimated burden is 153 hours a year.

Dated: June 4, 2001.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 01–14818 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–43]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 4, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 8, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8269.

Petitioner: Helicopter Lift Services, Inc.

Section of 14 CFR Affected: 14 CFR § 133.33(d)(1).

Description of Relief Sought: To permit HLSI to develop, submit, and obtain FAA approval on behalf of part 133 operators in helicopter lift operations.

[FR Doc. 01–14910 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–44]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9437.

Petitioner: Quest Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit QAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/24/2001, Exemption No. 7531.

Docket No.: FAA–2001–9282 (previously Docket No. 25210).

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 63.39(b)(1) and (2), and 121.425(a)(2)(i) and (ii).

Description of Relief Sought/Disposition: To permit the extension for

ATA-member airlines and other qualifying part 121 certificate holders conducting part 121-approved flight engineer training to meet the certification requirements, or the effective date of the rulemaking to amend §§ 63.39(b)(1) and (2), and 121.425(a)(2)(ii), whichever occurs first.

Grant, 05/24/2001, Exemption No. 4901G.

Docket No.: 30169.

Petitioner: Capital City Air Carrier, Inc.

Section of 14 CFR Affected: 14 CFR 61.51(f)(2).

Description of Relief Sought/ Disposition: To permit CCAC pilots to log second-in-command flight time for cargo flights in certain multiengine aircraft when more than one pilot is not required by either the aircraft type certificate or the regulations under which the flight is conducted.

Denial, 05/25/2001, Exemption No. 7537.

Docket No.: FAA–2001–9353 (previously Docket No. 25052).

Petitioner: Promech, Inc.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To permit certain certificate holders conducting operations under part 135 to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual Flight Rules below 500 feet above the surface.

Grant, 05/24/2001, Exemption No. 4760I.

Docket No.: FAA–2001–8935.

Petitioner: Emery Worldwide Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

Description of Relief Sought/ Disposition: To permit EWA to conduct its supplemental operations within the 48 contiguous United States and the District of Columbia using the flight regulations for alternate airports as required by 121.619 and fuel reserve requirements as required by § 121.639 that are applicable to domestic operations.

Grant, 05/29/2001, Exemption No. 7536.

Docket No.: FAA–2000–8255.

Petitioner: Stallion 51 Corporation.

Section of 14 CFR Affected: 14 CFR 91.319(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit Stallion 51 to receive compensation for the use of its L–39C for initial and recurrent training of applicants for an LOA in the L–39C; instrument and formation flight training to remove restrictions from current LOAs, or to satisfy the initial instrument training requirement for original issuance of an LOA; and upset and unusual attitude recovery training for holders of type ratings or LOAs of turbojet aircraft.

Partial Grant, 05/24/2001, Exemption No. 7538.

Docket No.: FAA–2000–8527.

Petitioner: Pan Am International Flight Academy, Inc.

Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit Pan Am and operators of Cessna Citation Model 550, S550, 552, or 560 airplanes to operate those airplanes without a pilot who is designated as second in command.

Grant, 05/29/2001, Exemption No. 7487A.

Docket No.: FAA–2001–8944 (previously Docket No. 29481).

Petitioner: Republic Helicopters, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit RHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/29/2001, Exemption No. 6912A.

Docket No.: FAA–2001–9522.

Petitioner: Eric Kindig dba EK Aviation.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition:

To permit EKA to conduct local sightseeing flights at the Sydney, Ohio, airport air fair on June 30, 2001, and at the Urbana, Ohio, airport air fair on July 4, 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/29/2001, Exemption No. 7532.

Docket No.: FAA–2001–9102 (previously Docket No. 29419).

Petitioner: General Electric Engine Services, Inc., Aviation Component Services Center.

Section of 14 CFR Affected: 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).

Description of Relief Sought/ Disposition: To permit ACSC to use computer-generated electronic signatures to satisfy approval for return-to-service signature requirements.

Grant, 05/29/2001, Exemption No. 6926A.

Docket No.: FAA–2001–9099.

Petitioner: Palmyra Flying Club.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit PFC to conduct local sightseeing flights at Palmyra Airport for the Fly-In Breakfast during June 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 05/29/2001, Exemption No. 7534.

Docket No.: Faa–2001–9436.

Petitioner: First Wing Management, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit First Wing to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 05/29/2001, Exemption No. 7533.

Docket No.: FAA–2001–9283.

Petitioner: Atlantic Coast Airlines.

Section of 14 CFR Affected: 14 CFR 121.411, 121.413, 121.434, 121.440, and 121.441.

Description of Relief Sought/ Disposition: To permit ACA ground training (initial and recurrent), flight training (initial and recurrent), pilot checks (including line checks), and operating experience for the 328Jet acquired or accomplished by each pilot or each check airman at ACJet to count for that individual and for ACA as if the individual accomplished the regulatory requirement at ACA.

Grant, 05/29/2001, Exemption No. 7539.

Docket No.: FAA–2001–8752 (previously Docket No. 28094).

Petitioner: American Trans Air.

Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1) and appendix F to part 121.

Description of Relief Sought/ Disposition: To permit AMTA to combine recurrent flight and ground training and proficiency checks for AMTA's flight crew members in a single annual training and proficiency evaluation program.

Grant, 05/29/2001, Exemption No. 6090C.

Docket No.: FAA–2001–9690 (previously Docket No. 28830).

Petitioner: Empresa Brasileira de Aeronautica S.A.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit EMBRAER to use the calibration standards of Instituto Nacional de Metrologia, Normalização e Qualidade Industrial in lieu of the calibration standards of the U.S.

National Institute of Standards and Technology to test its inspection and test equipment.

Grant, 05/29/2001, Exemption No. 6616B.

[FR Doc. 01–14911 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

International Conference on Fire and Cabin Safety Research

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public conference.

SUMMARY: This notice announces the International Conference on Fire and Cabin Safety Research, which is being held by the Federal Aviation Administration and is similar to conferences held in 1995 and 1998 to discuss the current state of cabin and fire safety research. The Joint Aviation Authorities of Europe, Transport Canada Civil Aviation, the Civil Aviation Bureau of Japan, and the Civil Aviation Safety Authority of Australia are jointly sponsoring the Cabin Safety Research Program and the conference.

DATES: The conference is scheduled for Monday through Thursday, October 22–25, 2001. The conference registration desk will be open from 6 p.m. until 8 p.m., October 21, and from 9 a.m. to 5 p.m., October 22. The conference will begin at 1:30 p.m., October 22.

Registration: Persons planning to attend the conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. The deadline for pre-registration is September 21, 2001. Attendance is open to the interested public, but will be limited to the space available. There is a $240 fee to attend the conference, which will include lunch and refreshments each day, as well as one dinner. Payment can be in the form of checks, VISA, or MasterCard.

ADDRESSES: The conference will be held at the Trump Taj Mahal Casino-Resort, 1000 Boardwalk at Virginia Ave., Atlantic City New Jersey, telephone 1–800–825–8888 (outside the United States: 609–449–1000).

FOR FURTHER INFORMATION CONTACT: April Horner, Galaxy Scientific Corporation, c/o FAA Technical Center, Fire Safety Branch, AAR–422, Bldg. 287, Atlantic City International Airport, New Jersey 08405; telephone 609–485–4471, fax 609–646–5229, or on the Internet at: *April.CTR.Horner@tc.faa.gov.*

SUPPLEMENTARY INFORMATION: Notice is given of a public conference to be held October 22–25, 2001, at the Trump Taj Mahal Casino-Resort, 1000 Boardwalk at Virginia Ave., Atlantic City New Jersey. This conference is a follow-up to similar conferences held in 1995 and 1998, and is intended to summarize the current state of cabin and fire safety research, as well as explore the directions of future research.

In order to more systematically address the subject of cabin safety research, the FAA, in conjunction with the Joint Aviation Authorities (JAA) of Europe and Transport Canada Civil Aviation (TCCA), developed a Cabin Safety Research Program (CSRP) plan. The CSRP describes a procedure whereby the various aviation authorities can identify, and assess the potential benefit of, research in different areas and later determine the appropriateness of specific cabin safety research. This plan was introduced at the 1995 conference, and the authorities have been working under its provisions since then.

While research has been very productive and has resulted in improved safety standards, it has been largely carried out in piecemeal fashion, outside of a systematic framework. There was no formal vehicle to integrate all cabin safety research so that the benefits are maximized, and the available funds are spent efficiently. The FAA has developed such a vehicle to improve both the efficiency and quality of future cabin safety research. Because research will often result in new guidance or regulation, and because the aviation industry is largely an international entity, this potential regulatory impact must be harmonized between regulatory authorities. Therefore, the development of the revised CSRP was coordinated with the JAA, TCCA, the Civil Aviation Bureau of Japan (JCAB), and the Civil Aviation Safety Authority of Australia (CASA).

Based on the success of both previous conferences, the FAA has determined that a follow-up is appropriate and timely, and that issues relating to fire safety in general (that is, fire safety not limited to the cabin) should be included. This conference will afford the interested public an opportunity to comment on the research programs currently underway, as well suggest the course of future research.

Additional information regarding the conference can be found on the World Wide Web, at: *http://www.fire.tc./faa.gov.*

Conference Agenda

Monday, October 22, 2001

Conference Opening Sessions: 1:30 PM–5:00 PM

Presentations of general interest and program goals

Tuesday, October 23, 2001

AM

Evacuation I—Fire—General Issues

PM

Evacuation II—Fire—Thermal Acoustic Insulation (including burnthrough); Fire—Detection

Wednesday, October 24, 2001

AM

Evacuation III—Crash Dynamics I—Fire—fuel Tank Inerting; Fire—Advanced Materials Flammability

PM

Evacuation IV—Operational Issues I—Crash Dynamics II—Fire—Fuel Tank Protection; Fire—Advanced Materials Flammability

Thursday, October 24, 2001

AM

Crash Dynamics III—Fire—Materials in Inaccessible Areas; Fire—Fire Suppression; Operational Issues II

PM

Operational Issues III—Fire—Material & Component Flammability; Fire—Fire Protection; Crash Dynamics IV

Note: This agenda involves simultaneous presentation of different topic areas. However, to the extent possible, subjects that might have broader applicability have been scheduled so as not to overlap.

Conference Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at the Trump Casino-Resort at a special conference rate. Persons wishing to attend the conference are encouraged to make room reservations by September 21, 2001, by contacting the hotel direct at 1–800–825–8888 (outside the United States: 609–449–1000). Use the reservation code ''AFAA01'' to receive the special rate.

Persons outside the United States who have questions of a technical nature, or would like to find out more regarding the local Airworthiness Authority's involvement, may contact:

In Canada:

Mr. Claude Lewis, Transport Canada Civil Aviation, Aircraft Certification Branch—AARDH, Ottawa, Ontario, Canada K1A 0N8, telephone: 613–990–5906, fax: 613–996–9178; e-mail: *lewis@tc.gc.ca.*

In Japan:

Mr. Hiroaki Tomita, Civil Aviation Bureau of Japan (JCAB), Airworthiness Division. 2–1–3 Kasumigaseki, Chiyoda-ku, Tokyo, 100–8989, Japan, telephone: 813 3592 1362, fax: 813 3580 7963 e-mail: *tomita-h2ei@mlit.go.jp*

In Europe:

Mr. Graham Greene, U.K. Civil Aviation Authority, Safety Regulation Group, Aviation House, Gatwick RH6 OYR, United Kingdom, telephone: 44 1 293 573 462, fax: 44 1 293 573 981; e-mail: graham.greene@srg.caa.co.uk

In Australia:

Mr. Bruce Byers, Specialist Engineer, Crashworthiness, Civil Aviation Safety Authority, Level 1 Novell House, 71 Northbourne Ave, Canberra ACT 2600 telephone: 61 2 62171866; e-mail: *BYERS B@casa.gov.au.*

The following procedures are established to facilitate the workings of the conference.

- The conference will be open on a space available basis to all persons registered.
- A $240 fee will be charged for attending the conference. This fee will include lunch, as well as refreshments during breaks each day, and one dinner.
- Following each presentation, or series of presentations on a similar topic, a brief question and answer period may be allowed, and participants will be given the opportunity for open discussions, within the time available. In addition, there will be separate workshop sessions following some of the technical sessions for more in depth discussion.
- This conference is intended to address fire and cabin safety research, rather than regulatory, issues. As such, statements made by Airworthiness Authority participants at the conference will not be taken as expressing final Authority positions.

Issued in Renton, Washington, on June 5, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–14912 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2001, there were eight applications approved. This notice also includes information on one application, approved in March 2001, inadvertently left off the March 2001 notice. Additionally, 29 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Application Approved

Public Agency: Dallas/Fort Worth Airport Board, Dallas/Fort Worth, Texas.

Application Number: 01–05–C–00–DFW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,681,378,893.

Earliest Charge Effective Date: April 1, 2001.

Estimated Charge Expiration Date: December 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators (charter operators).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dallas/Forth Worth International Airport.

Brief Description of Projects Approved for Collection and Use:

Elevate service roads between terminals C and D.
Install 12 precision approach path indicators.
Upgrade 5W cargo road and cross-under.
Expand terminal B (international area).

Brief Description of Projects Approved in Part for Collection and Use: Construct automated people mover and associated development.

Determination: Approved in part. The operations, maintenance, and sotrage facility is generally ineligible under paragraphs 301 and 501, as well as Appendix 2, of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook (October 24, 1989), with the exception of the equipment needed to provide operational control of the ''opening day'' system. Therefore, the use of PFC revenue for the following elements of the maintenance facility, at a minimum, are not eligible: Spare parts or spare equipment, any equipment required to perform any maintenance, whether that maintenance be on vehicles, structural elements, operations systems, or other components, administrative offices, any build-up of operational equipment in order to accommodate future expansion of the system; and the guideway and associated infrastructure necessary to access the maintenance facility.

Upgrade airport directional signage.

Determination: Partially approved. The FAA has determined that the 86 percent of the planned signage is eligible for PFC funding. The project scope includes 20 signs adjacent to State, Federal, or Interstate highways as well as signs in revenue producing areas which were determined to be ineligible for PFC funding.

Brief Description of Disapproved Project:

Construct 5W deicing ground service equipment facility.

Determination: Disapproved. Storage facilities for aircraft deicing equipment and fluids are not AIP eligible under 49 U.S.C. 47102(3)(B)(v) or 47102(G). Therefore, this project is not PFC eligible under § 158.15(h)(1).

Brief Description of Projects Withdrawn:

Upgrade airport-wide fueling system.
Widen 35L/35C aircraft rescue and firefighting (ARFF) road.
Construct DPS service center.
Construct environmental material handling facility.
Upgrade terminal circulation roads.
Acquire compressed natural gas buses.

Determination: These projects were withdrawn by the public agency by letter dated March 19, 2001. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: March 29, 2001.

For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

Application Number: 00–04–C–00–BUR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $73,699,087.

Earliest Charge Effective Date: June 1, 2010.

Estimated Charge Expiration Date: April 1, 2021.

Class of Air Carriers Not Required to Collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Burbank-Glendale-Pasadena Airport.

Brief Description of Projects Approved for Collection and Use:

Temporary ARFF station.
Modular ARFF station.
Gates B4 and B5 hardstand work.
ARFF equipment.
Gate B2 hardstand.
Airfield signage.
ARFF station ramp.
Sealcoat and stripe taxiways B and D.
Gate B5 paving.
Tie-in C–6 paving.
B ramp hardstand and striping.
Taxilane centerline lighting.
Restripe east ramp.
Intersection marking change.
Hardstand extension at gate A4.
East ramp hardstands.
Airfield distance remaining signs.
Aircraft holding pad, runway 15 center reconstruction, airfield signage, and taxiway lighting.
Taxiway B lights, airfield signage, taxiway A, B, C, and taxilane rehabilitation, and runway 8/26 blast fence extension.
ARFF equipment.
Access controls.
Runway 33 rehabilitation.
Roadway signage.
Terminal road restriping.
Avenue B repairs.
Terminal entrance road repairs.
Noise monitoring equipment.
Part 150 update.
East concourse modifications.
1000 KV generator.
Modification to holdrooms 1, 2, 3, and 4.
Americans with Disabilities Act access.
Holdrooms 5, 6, and 7 modifications.
Terminal A baggage claim modifications.
Building 10 seismic retrofit.
Terminal B restrooms.
Terminal B sewer.
Home acoustical treatment in original Part 150 program.
Luther Burbank School acoustical treatment.
Glenwood School acoustical treatment.
Mingay School acoustical treatment.
St. Patrick's School acoustical treatment.
Additional residences for acoustical treatment.
Additional schools for acoustical treatment.

Brief Description of Disapproved Projects:

Arvilla Street and San Fernando Road Improvements.

Determination: Disapproved. This project is not eligible in accordance with paragraph 553a of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b)(1).

Americans with Disabilities Act (ADA) access.

Determination: Disapproved. The proposed elevator serves exclusive airport offices and leased airlines offices only and does not aid in the movement of passengers and baggage within the airport. Therefore, in accordance with Program Guidance Letter 93–3.5, this project is not AIP eligible and does not meet the requirements of § 158.15(b)(1).

Decision date: April 2, 2001.

For Further Information Contact: Ruben Cabalbag, Western Pacific Region Airports Division, (310) 725–3630.

Public Agency: State of Connecticut, Department of Transportation, Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 01–13–U–00–BDL.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in This Decision: $4,400,000.

Charge Effective Date: November 1, 1999.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: No charge from previous decision.

Brief Description of Project Approved for Use:

Reconstruction of the east end of taxiway S.

Decision Date: April 2, 2001.

For Further Information Contact: Priscilla A. Scott, New England region Airports Division, (781) 238–7614.

Public Agency: City of Eugene, Oregon.

Application Number: 01–04–C–00–EUG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,155,267.

Earliest Charge Effective Date: June 1, 2001.

Estimated Charge Expiration Date: June 1, 2003.

Classes of Air Carriers Not Required to Collect PFC's:

(1) Operations by air taxi/commercial operators utilizing aircraft having a maximum seating capacity of less than 20 passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner; (2) operations by air taxi/commercial operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at Eugene Airport, Mahlon Sweet Field and are conducted within a 25-mile radius of the same airport, firefighting charters, ferry or training flights, air ambulance/medivac flights, and aerial photography or survey flights.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Eugene Airport, Mahlon Sweet Field.

Brief Description of Projects Approved for Collection and Use:

Runway 3/21 safety improvements.
Taxiway extension and ramp construction.
Terminal improvements.
B gate south ramp reconstruction.
Ramp pavement rehabilitation.
Jet bridge acquisition.

Brief Description of Project Withdrawn:

Land acquisition.

Determination: This project was withdrawn by the public agency by letter dated March 30, 2001. Therefore, the FAA did not rule on this project in this decision.

Decision Date: April 5, 2001.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 01–12–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,486,284,358.

Earliest Charge Effective Date: May 1, 2008.

Estimated Charge Expiration Date: April 1, 2016.

Class of Air Carriers not Required to Collect PFC's: Air taxi.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).

Brief Description of Projects Approved for Collection at ORD and use at ORD at a $4.50 PFC Level:

ARFF/simulator training facility.
Runway deicing fluid facility improvements.
Runway weather sensors upgrade.
Service road to general aviation apron.
Land and hold short operations improvements.
School insulation—1999–2001.
Residential insulation—2000.
Residential insulation—2001.
Shoulder rehabilitation—runways 4R/22L and 9L/27R.
Cargo tunnel structural repairs.
Interactive computer training system.
Explosive blast mitigation—glass coating.
Small basin storm water quality.
Runway 14R/32L rehabilitation.
Taxiway T extension rehabilitation.
Taxiway W rehabilitation.
General aviation pavement rehabilitation.
Acquisition of 1998 security and fire equipment.
Blast mitigation—phase II.
Lake O'Hare capacity enhancement.
Runway 9L/27R rehabilitation.
Perimeter intrusion detection system.
Taxiway B rehabilitation at Concourse 3/Concourse 5.
Snow dump improvements.
Runway 14L/32R rehabilitation.
Concourse F extension.
World Gateway Program formulation.

Brief Description of Projects Approved in Part for Collection at ORD and use at ORD at a $4.50 PFC Level:

Security checkpoint equipment.

Determination: Partially approved. Explosive trace detection equipment has already been deployed to each checkpoint in sufficient number to meet current FAA regulations and operating procedures. Therefore, the explosive trace detection equipment element of this project is not approved.

Wetlands relocation.

Determination: Partially approved. The environmental assessment in support of this project included only the detailed analysis for filling 6.3 acres of wetlands in a portion of the runway protection zone and for remediating 24.08 acres of wetlands located in the southwest portion of ORD. The remaining wetlands have not been environmentally evaluated and thus the public agency cannot meet the requirement of § 158.25(c)(1)(ii)(B) for the remaining wetlands and that portion of the project is not approved.

Brief Description of Project Approved for Collection at ORD and Use at Chicago Midway Airport at a $4.50 PFC Level:

Home soundproofing.

Brief Description of Projects Approved for Collection at ORD for Future Use at ORD at a $4.50 PFC Level:

Concourse K extension.
Taxiway A/B extension/oil separators relocation.
Hardstand apron.
Terminal 6 development.
Terminal 1/Terminal 2 connection expansion.
Concourse L extension.
Runway 18/36 rehabilitation.

Brief Description of Project Approved in Part For Collection at ORD for Future Use at ORD at a $4.50 PFC Level:

Airport Transit System (ATS) maintenance relocation.

Determination: Partially approved. This project meets the nominal requirements for AIP eligibility and, therefore, PFC eligibility under paragraph 594(a) of FAA Order 5100.38A, AIP Handbook (October 24, 1989) which provides for the relocation of a facility that impedes eligible development. However, maintenance facilities are eligible only in so far as they provide maintenance for eligible safety and security equipment per paragraph 567(e)(1) of FAA Order 5100.38A. Therefore, the use of PFC revenue is limited to the cost to replace a like facility. Any expansion or upgrade would not be PFC eligible.

Brief Description of Projects Approved For Collection at ORD and Use at ORD at a $3.00 PFC Level:

Terminal 1, Terminal 2, Terminal 3 facade and circulation enhancement improvements.
Terminal 5 upper level roadway rehabilitation.
ATS remote parking lot station.
Purchase two new ATS cars.
Military site acquisition formulation.
Soil erosion and sedimentation control.
Terminal 3 ATS bridge.
Terminal 1 elevator expansion.
Upper level roadway deck rehabilitation.
ATS vehicles acquisition (3 cars).
ATS remote station escalator.
ATS MIRA computer replacement.
Bessie Coleman Drive rehabiliation—phase II.
Equipment service platforms at Heating and Refrigeration (H&R) plant.
H&R formulation.
Military site airside fencing.
ATS vehicles acquisition (12 cars).
Bessie Coleman bridge rehabilitation.
National Pollution Discharge Elimination System permit compliance.

Brief Description of Projects Approved in Part for Collection at ORD and Use at ORD at a $3.00 PFC Level:

Snow/security/fire miscellaneous equipment.

Determination: partially approved. This project included 11 components of which four were determined to be ineligible for AIP and, therefor, PFC funding. The four disapproved components and the reason for each disapproval are: Four pickup truck small salters (these units are not used on runways, taxiways, aprons, or gate areas as required in order to be eligible under AIP criteria); one fire step van (this unit is not required by Part 139 to meet ARFF requirements); three ambulance trucks (these units are not required by Part 139 to meet ARFF requirements); and two portable stairway trucks (these units are not required by Part 139 to meet ARFF requirements).

Oil separators 1, 2, and 3 rehabilitation.

Determination: Partially approved. Any general maintenance, such as the repair to lake erosion, is not AIP eligible and, therefore, is not PFC eligible.

Concession area public space buildout.

Determination: Partially approved. The FAA has determined that a portion of this project is for the benefit of the food court and other revenue producing vendors. Therefore, even though the public agency identifies these areas as public seating and for public use, the FAA has concluded that the seating areas proposed for the E/F apex, H/K apex, and Rotunda are not AIP or PFC eligible. However, in addition to the seating areas, the public agency proposes circulation improvements intended to improve the efficiency of passenger movements between and among terminals and concourses as well as provide access to restroom facilities. The public agency estimates that the circulation portion of the project has been reduced by the final design of the various areas to the point that the PFC portion of the project is approximately 32 percent of the total. Furthermore, the FAA's analysis concluded that the Concourse B food court does not provide additional public circulation and is primarily for the benefit of the vendor area. Thus, the Concourse B area is completely ineligible. In addition, since the public agency listed the Concourse H and K food courts separately from the H/K apek, the FAA assumes these are separate areas. However, because the public agency did not provide any plans, sketches, or additional information regarding these food courts, the FAA was unable to determine if any portion of those areas was eligible. Therefore, PFC funds cannot be used to fund any improvements in the H and K food courts.

Airport maintenance complex addition.

Determination: Partially approved. This project is generally eligible under AIP criteria, paragraphs 567(d) and 568 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, to the extent a building houses both eligible and ineligible equipment, the eligible cost of the building and utilities for the building must be a prorated share of the total project cost, under paragraph 568 of FAA Order 5100.38A.

Landside formulation.

Determination: Partially approved. Elements of work not specifically identified in the public agency's PFC Attachment B's for this project are not included in this approval. Furthermore, to the element that any of the elements listed involve ineligible (off-airport) work, the costs of planning, study, assessment, and design attributable to the off-airport portion of the project is not PFC eligible.

High temperature water piping: elimination of ball joints.

Determination: Partially approved. This project is generally eligible under AIP criteria, paragraph 568 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, to the extent the high temperature water piping serves both eligible and ineligible buildings and/or spaces, the eligible cost of utilities for the airport must be a prorated share of the total project cost.

Brief Description of Projects Approved for Collection at ORD and Use at Gary/Chicago Airport (GYY) at a $3.00 PFC Level:

Acquisition of a 1500-gallon ARFF vehicle.
Terminal renovation—phase III.
Apron deicing facility.
East T-Hangar area site work.
Perimeter fencing.
Terminal renovations program.
Automated weather observation system.
General aviation apron overlay/expansion.
Phase II airport master plan.
Terminal apron expansion.
Snow removal equipment.
Acquire 1500-gallon ARFF vehicle.
Terminal renovation—phase II.

Brief Description of Projects Approved for Collection at ORD for Future Use at ORD at a $3.00 PFC Level:

Relocated Northwest Tollway connection
Balmoral Drive extension.
I–190 Collector/distributor.
ATS station at rental car campus.
ATS north extension.
Touch Avenue Reservoir.

Brief Description of Projects Approved in Part for Collection at ORD for Future Use at ORD at a $3.00 PFC Level:

Concourse C upgrade.

Determination: Partially approved. Some elements of this project may meet the nominal requirements for AIP eligibility, and therefore, PFC eligibility under paragraph 551 of FAA order 5100.38A, AIP Handbook (October 24, 1989). However, the FAA has determined that the public agency did not provide sufficient description or justification concerning the majority of the proposed elements to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is needed to comply with ADA requirements, is eligible. The information provided on the remaining tasks in this project did not allow the FAA to conclude that the remainder of this project involved eligible reconstruction/repair rather than ineligible maintenance work (paragraph 501 of FAA Order 5100.38A).

Concourse B upgrade.

Determination: partially approved. Some elements of this project may meet the nominal requirements for AIP eligibility, and, therefore, PFC eligibility under paragraph 551 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, the FAA has determined that the public agency did not provide sufficient description or justification concerning the majority of the proposed elements to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is needed to comply with ADA requirements, in eligible. The information provided on the remaining tasks in this project did not allow the FAA to conclude that the remainder of this project involved eligible reconstruction/repair rather than ineligible maintenance work (paragraph 501 of FAA Order 5100.38A).

Concourse L upgrade.

Determination: Partially approved. Some elements of this project may meet the nominal requirements for AIP eligibility, and therefore, PFC eligibility under paragraph 551 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, the FAA has determined that the public agency did not provide sufficient description or justification concerning the majority of the proposed elements to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is needed to comply with ADA requirements, is eligible. The information provided on the remaining tasks in this project did not allow the FAA to conclude that the remainder of this project involved eligible reconstruction/repair rather than ineligible maintenance work (paragraph 501 of FAA Order 5100.38A).

Concourse K upgrade.

Determination: Partially approved. Some elements of this project may meet the nominal requirements for AIP eligibility, and therefore, PFC eligibility under paragraph 551 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, the FAA has determined that the public agency did not provide sufficient description or justification concerning the majority of the proposed elements to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is needed to comply with ADA requirements, is eligible. The information provided on the remaining tasks in this project did not allow the FAA to conclude that the remainder of this project involved eligible reconstruction/repair rather than ineligible maintenance work (paragraph 501 of FAA Order 5100.38A).

Concourse H upgrade.

Determination: Partially approved. Some elements of this project may meet the nominal requirements for AIP eligibility, and therefore, PFC eligibility under paragraph 551 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). However, the FAA has determined that the public agency did not provide sufficient description or justification concerning the majority of the proposed elements to allow a determination of nominal eligibility for those elements. The FAA was able to conclude that the restroom work, insofar as this work is needed to comply with ADA requirements, is eligible. The information provided on the remaining tasks in this project did not allow the FAA to conclude that the remainder of this project involved eligible reconstruction/repair rather than ineligible maintenance work (paragraph 501 of FAA Order 5100.38A).

New police facility.

Determination: Partially approved. The FAA has determined that not all activities at the Police Facility support Part 107 functions. The Federal Security Manager for ORD has determined that approximately 80 percent of the facility will support Part 107 activities and, thus, this approval is limited to that 80 percent of the facility which is eligible.

Brief Description of Withdrawn Project:

Airside perimeter road rehabilitation/construction

Determination: this project was withdrawn by the public agency by

letter dated January 4, 2001. Therefore, the FAA did not rule on this project in this decision.

Brief Description of Disapproved Projects:

Automated vehicle identification—ground transportation.

Determination: Disapproved. The FAA has determined that this project provides a system for controlling commercial vehicles (taxis and limousines) and charging them for the Metropolitan Pier and Exposition Authority commercial vehicle tax. The FAA has determined that the collection of a local vehicle tax does not preserve or enhance capacity, safety, or security, furnish opportunities for enhanced competition between or among air carriers, or mitigate noise impacts resulting from aircraft operations at ORD. Therefore, this project does not meet the requirements of § 158.15(a).

Perimeter intrusion detection system—phase II.

Determination: Disapproved. The FAA's Federal Security Manager for ORD has reviewed the proposed project and has determined that the existing 10-foot fence with outriggers and barbed wire, when combined with periodic patrols, meets the requirements of part 107. Therefore, this project is not required to meet part 107, does not meet the requirements of § 158.15(b)(1), and is not PFC eligible.

360 degree Silicon Graphics Incorporated based tower simulator.

Determination: Disapproved. Training programs for air traffic controllers are not airport development as defined by AIP criteria. In addition, the development of new flight patterns or procedures is not AIP eligible. Therefore, this project does not meet the requirements of § 158.15(b)(1).

Zemke road extension.

Determination: Disapproved. The FAA has determined that the scope of the project describes a roadway that will be utilized for access to the soon-to-be-built United Airlines corporate headquarters building, a non-aeronautical facility. As presently depicted, this road does not exclusively serve airport traffic as is required by paragraph 553(a)(3) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). therefore, this project does not meet the requirements of § 158.15(b)(1).

Decision Date: April 16, 2001.

For Further Information Contact: Thomas E. Salaman, Chicago Airports District Office, (847) 294–7436.

Public Agency: City of San Jose, California.

Application Number: 01–10–C–00–SJC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $93,956,000.

Earliest Charge Effective Date: January 1, 2005.

Estimated Charge Expiration Date: January 1, 2009.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Jose International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Runway 30R reconstruction and extension.

Noise attenuation within the Category II and III eligibility areas.

Taxiway Y extension.

Decision Date: April 20, 2001.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Broward County Aviation Department, Fort Lauderdale, Florida.

Application Number: 01–04–C–00–FLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $34,202,199.

Earliest Charge Effective Date: March 1, 2009.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale-Hollywood International Airport.

Brief Description of Project Approved for Use:

Aviation easements.

Brief Description of Projects Approved for Collection and Use:

Common use terminal equipment.
Fiber optic backbone.
Concourse E, F, and H restrooms.
Pedestrian walkways.
Pedestrian canopies.
Curbside queuing lanes.
Commuter facility improvements.
Westside road relocation.
Inner terminal taxilanes—design.
Inner terminal taxilanes—construction.
Passenger loading bridge utilities infrastructure.
Taxiway B extension.

Brief Description of Project Approved in Part for Collection and Use:

Communications center equipment.

Determination: Partially approved. The FAA has determined that approximately 12.5 percent of the project is eligible. Eligible portions include the ARFF radio frequency, part 107 required security communications equipment, and approximately 425 square feet of floor space that would be utilized as the emergency operations center. Ineligible portions of the facility include areas and communications equipment that support airport operational functions not required by parts 139 and 107.

Decision Date: April 23, 2001.

For Further Information Contact: Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 20.

Public Agency: Jackson County, Medford, Oregon.

Application Number: 01–06–C–00–MFR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $271,648.

Earliest Charge Effective Date: February 1, 2003.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport and other similar limited, irregular, special service operations by such air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rogue Valley International—Medford Airport.

Brief Description of Projects Approved for Collection and Use:

Parallel taxiway extension.

High intensity runway lighting replacement.

Decision Date: April 27, 2001.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Salt Lake City Corporation, Department of Airports, Salt Lake City, Utah.

Application Number: 01–03–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $27,852,072.

Earliest Charge Effective Date: July 1, 2001.

Estimated Charge Expiration Date: May 2, 2002.

Class of Air Carriers Not Required To Collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Taxiway M (now H) reconstruction.
Cargo apron bypass.
South cargo apron expansion.
Taxiway S reconstruction.
Cargo site development and computer access security system (CASS).
Airfield bird habitat management—phase I.
Airfield bird habitat management—phase II.
Airfield bird habitat management—phase III.
Security access system (CASS).
CASS system expansion and upgrade.
Perimeter security fencing upgrade—phase I.
Perimeter security fencing upgrade—phase II.
Modify elevated runway guard lights, and install precision approach path indicators and runway end identifier lights.
Automated exit land at screening checkpoints.
Runway guard lights upgrade—phase II.
Deicing drainage improvements.
North cargo taxilane extension.
Taxiway H reconstruction—phase II.
Runway 16L pavement end and taxiway H reconstruction.
Acquisition of 3.83 acres in the vicinity of 2200 North.
Site preparation for new apron paving.
West apron paving and lighting—phase I.
West apron drainage.
East apron drainage.
West apron paving—phase II.

Brief Description of Project Approved in Part for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Closed circuit television system modifications and upgrade.

Determination: Partially approved. The FAA's Civil Aviation Security Field Office has determined that the cameras proposed to be located in the rental car facilities are not required to meet the requirements of part 107. Therefore, those cameras are not AIP or PFC eligible.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Airfield emergency access road and snow storage.
Improve airport access road (2200 North) for capacity enhancement program.
East apron overlay and reconstruction—phase I.
Airfield lighting control system and communications equipment relocation.
East side deicing.
Fore station 11 relocation.
Constant current regulators and circuit modifications.

Brief Description of Project Approved in Part for Collection at SLC and Use at SLC at a $3.00 PFC Level:

Electrical vault modifications.

Determination: Partially approved. The second floor of the building, as described by the public enemy, does not contain eligible facilities and thus is not eligible for PFC financing. The FAA estimates the cost of the second floor to be 50 percent of the total project cost.

Brief Description of Project Approved for Collection at SLC and Use at Tooele Valley Airport at a $3.00 PFC Level:

Wildlife fence.

Brief Description of Disapproved Project: Category III and approach lighting system with sequence flashers—II, runway 16R (now runway 16L).

Determination: Disapproved. The FAA has determined that if a notice to proceed or start of physical construction for a proposed PFC project occurred prior to November 5, 1990 (the date the PFC statute was enacted), the project is not PFC eligible under § 158.3. This is because implementation of a construction project occurs when the notice to proceed is issued or physical construction is begun, whichever is first. The notice to proceed for this project was issued October 22, 1990. Therefore, this project is not eligible to receive PFC funding at any PFC level.

Decision Date: April 30, 2001.

For Further Information Contact: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment Approved Date	Original Approved Net PFC Revenue	Amended Approved Net PFC Revenue	Original Estimated Charge Exp. Date	Amended Estimated Charge Exp. Date
94–01–C–04–FLL, Fort Lauderdale, FL	01/31/01	$52,777,754	$46,592,957	09/01/98	09/01/98
98–02–C–02–FLL, Fort Lauderdale, FL	01/31/01	$191,105,272	$183,627,920	11/01/07	01/01/07
92–01–C–08–SJC, San Jose, CA	03/28/01	$71,744,826	$70,558,668	01/01/96	09/01/95
94–04–U–02–SJC, San Jose, CA	03/28/01	NA	NA	01/01/96	09/01/95
95–05–C–01–SJC, San Jose, CA	03/28/01	$9,094,000	$4,059,393	06/01/99	02/01/99
92–01–1–01–BUF, Buffalo, NY	03/28/01	$78,731,538	$81,167,538	12/01/04	12/01/04
95–02–C–03–BUF, Buffalo, NY	03/28/01	$6,748,496	$6,748,496	07/01/15	07/01/15
*00–04–C–01–VLD, Valdosta, GA	03/30/01	$230,300	$230,300	06/01/01	09/01/01
97–03–C–05–DFW, Dallas/Fort Worth, TX	03/30/01	$261,050,427	$121,412,427	04/01/01	02/01/00
93–01–C–01–CKB, Clarksburg, WV	04/02/01	$105,256	$79,103	04/01/96	10/01/95
99–02–C–01–COD, Cody, WY	04/13/01	$219,000	$219,000	07/01/02	03/01/02
*96–05–C–05–ORD, Chicago, IL	04/16/01	$456,884,197	$451,595,749	11/01/11	04/01/08
*98–07–C–01–ORD, Chicago IL	04/16/01	$61,717,809	$52,903,281	08/01/12	06/01/08
*98–03–C–01–HDN, Hayden, CO	04/18/01	$1,130,176	$1,130,176	12/01/02	06/01/02
93–01–C–03–GEG, Spokane, WA	04/18/01	$12,676,598	$12,594,838	04/01/98	04/01/98
98–03–C–03–BGM, Binghamton, NY	04/20/01	$1,811,886	$611,886	04/01/06	10/01/03

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. City, State	Amendment Approved Date	Original Approved Net PFC Revenue	Amended Approved Net PFC Revenue	Original Estimated Charge Exp. Date	Amended Estimated Charge Exp. Date
94–04–C–02–CHO, Charlottesville, VA	04/23/01	$120,649	$117,084	10/01/93	10/01/93
95–07–1–03–CHO, Charlottesville, VA	04/23/01	$57,471	$59,785	09/01/00	09/01/00
97–10–C–02–CHO, Charlottesville, VA	04/23/01	$1,033,600	$1,027,904	12/01/03	12/01/03
*00–02–C–01–PIA, Peoria, IL	04/24/01	$5,776,324	$5,776,324	09/01/09	02/01/07
*97–03–C–02–TOL, Toledo, OH	04/24/01	$5,550,400	$5,500,400	08/01/04	12/01/03
*00–02–C–01–GTR, Columbus, MS	04/25/01	$223,321	$222,321	06/01/08	08/01/05
92–01–C–04–MHT, Manchester, NH	04/25/01	$2,994,523	$3,148,067	10/01/98	10/01/98
98–06–U–01–MHT, Manchester, NH	04/25/01	NA	NA	10/01/98	10/01/98
97–05–C–01–MHT, Manchester, NH	04/27/01	$2,331,162	$2,386,396	10/01/98	10/01/98
96–03–C–01–SJU, San Juan, PR	04/27/01	$73,424,050	$68,223,897	11/01/02	04/01/02
97–10–C–03–CHO, Charlottesville, VA	04/30/01	$1,027,904	$897,404	12/01/03	09/01/03
99–13–U–01–CHO, Charlottesville, VA	04/30/01	NA	NA	12/01/03	09/01/03
*93–01–C–06–LEX, Lexington, KY	05/01/01	$15,185,918	$15,185,918	09/01/05	06/01/03

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4,50 per enplaned passenger, For Valdosta, Georgia and Lexington KY, this change is effective on June 1, 2001. For Hayden, CO, Peoria, IL, and Toledo, OH, this change is effective on July 1, 2001. Chicago, IL and Columbus, MS began collecting at a $4.50 level of April 1, 2001; the two amendments for Chicago and one amendment for Comumbus listed continue $4.50 collections beyond the original approved charge expiration date.)

Issued in Washington, DC, on June 6, 1996.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 01–14908 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 13, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Sandra D. La Mothe, Airport Manager, Houghton County Memorial Airport at the following address: Houghton County Memorial Airport, 23810 Airpark Boulevard, Suite 113, Calumet, Michigan 49913. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Houghton County Memorial Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arlene Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Houghton County Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 7, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Houghton County Memorial Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 14, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–08–C–00–CMX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2001.

Proposed charge expiration date: September 1, 2005.

Total estimated PFC revenue: $254,644.00.

Brief description of proposed projects: Reimbursement of charges for PFC application 99–07–C–00–CMX preparation, rehabilitate runway 13/31 and relocate high intensity runway lights.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: No class requested to be excluded.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Houghton County Memorial Airport.

Issued in Des Plaines, Illinois, on June 6, 2001.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–14907 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Juneau International Airport, Juneau, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 13, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David S. Stelling, Acting Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Allan A. Heese, Airport Manager, of the Juneau International Airport at the following address:

Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK 99513, (907) 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#01–05–C–00–JNU) to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 25, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 25, 2001.

The following is a brief overview of the application.

Application number: 01–05–C–00–JNU.

Level of the proposed PFC: $4.50.

Proposed charge effective date: August 1, 2001.

Proposed charge expiration date: March 30, 2002.

Total estimated PFC revenue: $650,000.

Brief description of proposed project(s): Acquire snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** at the FAA regional Airports office located at: FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on June 4, 2001.

David S. Stelling,

Acting Manager, Airports Division, Alaskan Region.

[FR Doc. 01–14906 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 01–04–C–00–HTS to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Tri-State Airport, Huntington, West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 13, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airport Field Office, 176 Airport Circle, Rm. 101, Beaver, West Virginia, 25813–9350.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Salyers, Airport Manager, Tri-State Airport Authority at the following address: 1449 Airport Road, Unit 1, Box 12, Hunting, WV 25704–9043.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Manager, Airport Field Office, 176 Airport Circle, Rm. 101, Beaver, WV 25813–9350, at (304) 252–6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 29, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tri-State Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapproved the application, in whole or in part, no latter than September 4, 2001.

The following is a brief overview of the application.

PFC Application No.: 01–04–C–00–HTS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2002.

Proposed charge expiration date: January 1, 2005.

Total estimated PFC revenue: $451,906.

Brief description of proposed project(s):

—Preparation of PFC Application
—Wildlife Security Fencing
—Reconstruction of Taxiway A

—Airport Master Plan Update
—Terminal Improvement
—Wildlife Hazard Assessment
—Design and Rehabilitation Runway 12/30

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: non-scheduled/on demand air carriers and large charter certificated route air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at:

1 Aviation Plaza, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11434–4809

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-State Airport Authority Office.

Dated: Issued in Jamaica, New York on May 29, 2001.

Thomas Felix,

Manager, Planning & Programming, Eastern Region.

[FR Doc. 01–14909 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bellevue, King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of notice of intent [FR document 97–13308; Filed 5–20–97].

SUMMARY: The FHWA is issuing this notice to rescind the previous Notice of Intent issued on May 9, 1997 [appeared in the **Federal Register** on May 21, 1997], to prepare an environmental impact statement (EIS) for the proposed highway project in Bellevue, King, County, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Mathis, Federal Highway Administration, Evergreen Plaza Building, Suite 501, 711 South Capitol Way, Olympia, Washington, 98501–1284, Telephone: (360) 753–9413; John Okamoto, WSDOT Northwest Region Administrator, 15700 Dayton Avenue North, P.O. Box 330310, Seattle, Washington, 98133–9710, Telephone: (206) 440–4691 or Len Pavelka, City of Bellevue Senior Transportation Planner, PO Box 90012, Bellevue, Washington 98009–9012, Telephone: (425) 452–2035.

SUPPLEMENTARY INFORMATION: The FHWA, with the co-lead agencies of the Washington State Department of Transportation (WSDOT) and the city of Bellevue, issued a Notice of Intent on May 9, 1997 to prepared an EIS on a proposal to provide additional eastbound and westbound access to SR 520 between Interstate 405 and 148th Avenue NE in Bellevue, Washington.

Following the alternative screening process, the Bellevue City Council acted on October 23, 2000, upon a recommendation by the project Interdisciplinary team and confirmed the selection of the ''No Action'' alternative as the preferred alternative for this project. Further work on the EIS was terminated.

The decision was based on three primary factors: (1) Controversial input from the adjacent community, (2) a review of the technical analysis summarized in the Transportation Technical Report which revealed a very low benefit to cost relationship, and (3) the analysis showed that the interchange alternatives at 124th Avenue NE and 130th Avenue NE would have a negligible affect on reducing congestion to meet the project purpose.

Estimated costs for the build alternatives ranged from $35 million to $80 million. These latest cost estimates were substantially higher than previous estimates and exceeded available funds to construct any type of added access improvement to/from SR 520.

In further response to the Council action, the City removed the project from its short-range (6 year) Capital Investment Program. The City is also removing the project from its mid-range (12 year) transportations programming document, the Transportation Facilities Plan.

Authority: Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.

Issued on: June 4, 2001.

Jim Leonard,

Transportation and Environmental Engineer, Olympia, Washington, for the division Administrator.

[FR Doc. 01–14829 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed highway project, the Long Island Travel and Information Center between Exits 51 and 52 adjacent to the eastbound roadway of the Long Island Expressway (I–495) in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Craig Siracusa, Regional Director, New York State Department of Transportation, Region 10, State Office Building, 250 Veterans Memorial Highway, Hauppauge, NY 11788, Telephone: 631–952–6632

or

Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: 518–431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to develop the Long Island Travel and Information Center (LITIC) in Suffolk County, New York. The LITIC is proposed for development between Exits 51 and 52 of the eastbound Long Island Expressway (LIE–I–495). The proposed facility would be constructed on an 11.8-acre parcel along the south side of the LIE, within State Row-of-Way, on which an existing parking area and recharge basin are presently located. The facility is needed to improve driver performance and safety, and to provide information to drivers about roadway conditions, overnight accommodations, and recreational attractions on Long Island. The facility, accessible only from the eastbound LIE, would have a traveler information center, rest rooms, parking for cars, trucks, buses and recreational vehicles, and related facilities. The existing 2-lane Carll's Straight Path bridge over the LIE at the western end of the project site would be replaced by a new 3-lane bridge. The proposed project site is in the Town of Huntington.

Alternatives under consideration include: (1) Taking no action; (2) replacing the existing seasonal parking area with a year-round travel and information center, and replacing the existing Carll's Straight Path bridge; and (3) replacing the existing seasonal parking area with a year-round travel and information center, and retaining the existing Carll's Straight Path bridge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. The draft EIS will be available for public and agency review and comment. A formal NEPA scoping meeting will be held at the State Office Building Cafeteria at 250 Veterans Memorial Highway, in Hauppauge, New York. The scoping meeting will be held on June 25, 2001 from 4:30 P.M. to 8:00 P.M.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Authority: 23 U.S.C. 315; 23 CFR 771.123.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 30, 2001.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 01–14828 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2001–9773]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before August 13, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Walter Culbreath, NHTSA 400 Seventh Street, S.W., Room 5238, NSC–01,Washington, D.C. 20590. Mr. Culbreath's telephone number is (202) 366–1566. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* 49 CFR Part 580 Odometer Disclosure Statement.

OMB Control Number: 2127–0047.

Affected Public: Households, Business, other for-profit, and not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

Abstract: The Federal Odometer Law, 49 U.S.C. Chapter 327, and implementing regulations, 49 CFR part 580 require each transferor of a motor vehicle to provide the transferee with a written disclosure of the vehicle's mileage. This dislcosure is to be made on the vehicle's title, or in the case of a vehicle that has never been titled, on a separate form. If the title is lost or is held by a lienholder, and where permitted by state law, the disclosure can be made on a state-issued, secure power of attorney.

Estimated Annual Burden: 2,586,160.

Number of Respondents: 130,000,000.

Issued on: June 7, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–14833 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 26, 2000 [65 FR 81414–81419].

DATES: Comments must be submitted on or before July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Steven Cohen at the National Highway Traffic Safety Administration, Office of Chief Counsel (NCC–30), 202–366–5263. 400 Seventh Street, SW, Room 5219, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Criminal Penalty Safe Harbor Provision.

OMB Number: 2127—0609.

Type of Request: Extension of a currently approved collection.

Abstract: Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) establishes 49 U.S.C. 30170, which provides for criminal liability in circumstances where a person had the intention of misleading the Secretary of Transportation (Secretary) regarding safety-related defects in motor vehicles or motor vehicle equipment that caused death or serious bodily injury. It also contains a ''safe harbor'' that allows a person to avoid criminal penalties if that person lacked knowledge at the time of the violation that the violation would result in an accident causing death or serious bodily injury and if that person corrects any improper reports or failure to report to the Secretary within a reasonable time.

Affected Public: Foreign manufacturers of motor vehicles and motor vehicle equipment located outside of the United States, which are importing these items into the United States.

Estimated Total Annual Burden: 18.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on June 7, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–14834 Filed 6–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34049]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCS) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over KCS's rail line (1) between KCS milepost 220.28 in Tennison, TX, and KCS milepost 201.89 in Wylie, TX, and (2) between KCS Engineering Station HB 43+59′ in Wylie and KCS Engineering Station 1097+80′ in Wylie, a total distance of approximately 21.14 miles.

The transaction is scheduled to be consummated on or after June 5, 2001, the effective date of the exemption.

The purpose of the trackage rights is to allow BNSF to move Norfolk Southern Railway Company haulage trains over the subject trackage to and from KCS's Wylie Yard.

Any employees affected by the subject transaction will be protected by the labor conditions prescribed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34049 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: June 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–14468 Filed 6–12–01; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 66, No. 114
Wednesday, June 13, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

Acquisition of Title to Land in Trust; Delay of Effective Date

Correction

Rule document 01–9382 was inadvertently published in the Proposed Rules section in the issue of Monday, April 16, 2001, appearing on page 19403. It should have appeared in the Rules and Regulations section.

[FR Doc. C1–9382 Filed 6–12–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

RIN 0701–AA56

Environmental Impact Analysis Process (EIAP); Correction

Correction

In rule document 01–14681 appearing on page 31177, in the issue of Monday, June 11, 2001, make the following correction:

On page 31177, in the first column, under the heading **DATES:** in the first line, ''July 11, 2001'' should read ''June 11, 2001''.

[FR Doc. C1–14681 Filed 6–12–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 13, 2001

Part II

Environmental Protection Agency

40 CFR Parts 72, 75, 78, and 97

Revisions to the Federal NO_X Budget Trading Program, the Emissions Monitoring Provisions, the Permits Regulation Provisions, and the Appeal Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 75, 78, and 97

[FRL–6984–8]

RIN 2060–AJ43

Revisions to the Federal NO_X Budget Trading Program, the Emissions Monitoring Provisions, the Permits Regulation Provisions, and the Appeal Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing rule revisions that would modify the existing requirements for sources affected by the Federal NO_X Budget Trading Program, the Acid Rain Program, and the October 27, 1998 NO_X SIP Call. The proposed revisions would streamline and add flexibility to the monitoring and reporting requirements in response to the significant changes that have occurred in power generation in recent years due to deregulation and recent environmental actions initiated by EPA to reduce nitrogen oxides emissions. This proposed action would also make certain technical corrections, remove outdated provisions, and correct printing, typographical, and grammatical errors to correct or clarify cross references, and, in a few instances, to ensure that the specific rule language is consistent with the Agency's intent.

DATES: Comments. All public comments must be received on or before July 30, 2001.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than June 25, 2001. If a hearing is held, it will take place June 27, 2001, beginning at 10 a.m.

ADDRESSES: *Comments.* Comments must be mailed (in duplicate if possible) to: EPA Air Docket (6102), Attention: Docket No. A–2000–33, Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If a public hearing is requested, it will be held at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in the Education Center Auditorium. Refer to the Clean Air Markets homepage at www.epa.gov/airmarkets for more information or to determine if a public hearing has been requested and will be held.

Docket. Docket No. A–2000–33, containing supporting information used to develop the proposal, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address.

FOR FURTHER INFORMATION CONTACT: Gabrielle Stevens, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 564–2681 or the Acid Rain Hotline at (202) 564–9620. Electronic copies of this document and technical support documents can be accessed through the EPA Web site at: http://www.epa.gov/airmarkets.

SUPPLEMENTARY INFORMATION: In accordance with titles I and IV of the Clean Air Act (CAA or the Act), EPA is proposing rule revisions to support previous actions the Agency has taken to mitigate interstate transport of nitrogen oxides as well as to reduce the acidic deposition precursor emissions of sulfur dioxide and nitrogen oxides (NO_X). Title I of the CAA, as amended by the Clean Air Act Amendments of 1990, authorizes EPA, under section 126 of the Act, to require reductions of NO_X emissions from sources that emit in violation of the CAA prohibition against significantly contributing to ozone nonattainment or maintenance problems in a downwind State that petitions EPA for relief. On January 18, 2000, EPA published a section 126 finding that a number of large electric generating units and large industrial boilers and turbines named in petitions filed by several northeastern States emit NO_X in violation of the CAA. In that same notice, the EPA finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. EPA originally promulgated 40 CFR parts 72, 75, and 78 on January 11, 1993, to implement the Acid Rain Program as authorized by title IV of the Act. EPA has subsequently promulgated several final rules revising the January 11, 1993 rules. The most recent revisions were promulgated on May 26, 1999. Finally, note that although today's proposal will not revise the Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group for Purposes of Reducing the Transport of Ozone (NO_X SIP call), promulgated on October 27, 1998, under section 110 of the Act, the proposed changes to the monitoring and reporting provisions of 40 CFR part 75 (and related changes to certain definitions in 40 CFR part 72) will affect sources that are subject to the NO_X SIP call, since many of these sources will be required to implement part 75 emissions monitoring.

The provisions of 40 CFR parts 72, 75, 78, and 97 will be revised to modify the existing requirements for sources affected by the Acid Rain Program, the Federal NO_X Budget Trading Program, and the October 27, 1998, NO_X SIP call. Today's proposal is limited to the specific provisions in parts 72, 75, 78, and 97 identified and discussed here. EPA is not considering reopening or requesting public comment on any other provisions of parts 72, 75, 78, or 97 or of the section 126 or NO_X SIP call rulemaking.

A redline/strikeout version of 40 CFR parts 72 and 75 as amended by this proposed rule is available in the Docket and on the EPA Web site referenced above. The contents of the preamble are listed in the following outline:

I. Regulated Entities
II. Background and Summary of the Proposed Rule
III. Detailed Discussion of Proposed Revisions
A. Rule Definitions
1. How does EPA propose to revise the definitions of pipeline natural gas and natural gas in § 72.2?
2. How does EPA propose to change the definitions of unit and stack operating hours?
3. What other definitions would be revised or added to the rule?
B. Certification Timeline Issues
1. What is the deadline for an application for initial certification?
2. For an appendix E peaking unit, when is initial certification required while combusting the backup fuel?
3. What happens if a unit loses peaking, gas-fired, or LME status?
C. Missing Data
1. How will the proposed rule affect the missing data procedures in §§ 75.31 through 75.37 for units that produce electrical or thermal output?
2. How will subpart H missing data provisions be affected for units that produce electrical or thermal output?
3. What are the missing data requirements for units that do not produce electrical or thermal output?
4. How will today's proposed rule revise the procedures in appendix C for establishing load ranges (or ''bins'') for missing data purposes?
5. How will the maximum potential moisture provision be revised?
6. How will the proposed rule affect the method of determination codes?
D. Low Mass Emissions (LME) Units
1. What are the certification requirements for low mass emissions (LME) units?
2. How does the LME methodology apply to subpart H units?
3. When must the annual demonstration for LME units be completed?
4. How should EPA Reference Method 20 be altered when determining a fuel-and unit-specific NO_X emission rate for an LME unit?
5. What temperature and humidity corrections are required for turbines

when unit-and fuel-specific NO_X emission rates are determined for LME units?
6. How is identical unit status demonstrated for a group of LME units?
7. How is the fuel-and unit-specific NO_X emission rate determined for LME turbines equipped with water injection, steam injection, or water/fuel emulsion, and no other type(s) of add-on NO_X controls?
8. What effect would today's proposed rule have on LME units sharing a common fuel supply?
9. When would single load testing be allowed to determine unit-and fuel-specific NO_X emission rates for LME units?
10. How are unit-specific, fuel-specific NO_X emission rates for LME units determined from the individual test run data at each load level?
11. Which mathematical equations are affected by the proposed changes to § 75.19?
E. Conditionally Valid Data—Mandatory Use
F. Quality Assurance/Quality Control (QA/QC)
1. What changes are proposed for CEMS span and range evaluations?
2. Will EPA allow use of two separate CEM systems with separate probes and sample interfaces to meet dual-range requirements?
3. What changes would the proposed rule make with regard to determining NO_X MPC, MEC, span, and range?
4. What revisions would be made to the 7-day calibration error test for peaking units?
5. What changes would be made to QA/QC for units with very low NO_X concentrations?
6. When would EPA require the application of a calibration correction factor to linearity or RATA test data?
7. What changes would be made to the flow-to-load ratio test?
8. When would three-load flow RATAs be allowed for routine quality assurance?
9. What changes would be made to the data analysis time period for single-load flow RATA claims?
10. For units that do not produce electrical output or steam load, at what operating levels should gas and flow monitor RATAs be performed?
G. Streamlining Changes
H. Monitoring Plan Information Submittal
1. What changes are proposed in the timeline for monitoring plan updates?
2. Is EPA changing the process for electronic submittal of monitoring plan updates and certification/recertification test results?
I. Appendix D—Miscellaneous Issues
J. Reporting and Recordkeeping
1. Will certification and recertification test notice requirements change?
2. Will EPA continue to accept hardcopy certification statements?
3. Will EPA allow the electronic storage of quality assurance/quality control plan information?
K. NO_X Monitoring in Multiple Stacks/Common Stacks
L. Appendix E Issues
1. How will the proposed rule affect Appendix E test notifications and submittal of hardcopy recertification test results?
2. Will the frequency of retesting of Appendix E units be changed?
3. How will the timeline for unscheduled Appendix E retests be revised?
4. How will Appendix E missing data procedures be changed?
5. How will the Appendix E testing requirements for emergency fuel be changed?
M. Reference Methods
1. Which Code of Federal Regulations versions of reference methods are to be used?
2. Are there other changes to reference methods?
N. Appendix G Revisions
O. Technical Changes and Corrections
P. What other changes is EPA proposing to the Federal NO_X Budget Trading Program today?
IV. Administrative Requirements
A. Public Hearing
B. Public Docket
C. Executive Order 12866
D. Unfunded Mandates Reform Act
E. Paperwork Reduction Act
F. Regulatory Flexibility
G. National Technology Transfer and Advancement Act
H. Executive Order 13175
I. Executive Order 12898
J. Executive Order 13045
K. Executive Order 13132

I. Regulated Entities

Entities regulated by this action are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators which produce electricity, generate steam, or cogenerate electricity and steam. While part 75 primarily regulates the electric utility industry, certain State and Federal NO_X mass emission trading programs may rely on subpart H of part 75, and those programs may include boilers, turbines, and combined cycle units from other industries. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	(1) Electric service providers (2) Process sources with large boilers and turbines where emissions exhaust through a stack

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations and in 40 CFR parts 96 and 97. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Background and Summary of the Proposed Rule

Today's proposed action modifies existing monitoring and reporting requirements in 40 CFR parts 72 and 75 that support emission control programs that use the monitoring and reporting provisions of part 75 such as the Acid Rain Program and State NO_X reduction programs developed in response to the October 27, 1998, NO_X SIP call. The emphasis of these revisions is three-fold: (1) To streamline the rule by eliminating outdated sections; (2) to make technical corrections and clarifications to the rule; and (3) to add flexibility to the monitoring and reporting requirements. The most substantive proposed changes are as follows: the definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2 would be revised to remove all references to the H_2S content of the fuel and would instead be based on total sulfur content (corresponding changes would be made to appendix D to part 75); the compliance and certification timelines for certifying monitoring systems would be made the same for new units, newly affected units, deferred units, and new stacks; the low mass emissions (LME) units provisions in § 75.19 would be clarified; for units with certain types of NO_X emission controls, qualification as a LME unit would be made easier; the CEMS missing data procedures would be revised to allow fuel-specific missing data substitution as well as the use of a controlled and uncontrolled database for units with add-on emission controls; the missing data procedures in subpart H of part 75 would be expanded and clarified for sources that report emission data only in the ozone season; the NO_X span and range provisions in appendix A would be revised to make them more realistic and easier to implement for combustion turbines; and the alternate calibration error limit for daily operation would be tightened from 10 ppm to 5 ppm for units with span values of 50 ppm or less. Many of the above changes to part 75 would affect the monitoring and reporting sections of

the part 97 rule. Therefore, today's proposed rule would also revise certain sections of part 97 to make the monitoring and reporting sections of the part 75 and part 97 rules consistent. In addition, certain miscellaneous changes would be made to clarify or correct minor errors in other sections of part 97 or to make the administrative appeal procedures in part 78 applicable to decisions of the Administrator under part 97.

III. Detailed Discussion of Proposed Revisions

A. Rule Definitions

EPA policy guidance and the instructions EPA has developed for monitoring and electronic reporting under part 75 rely on many terms that are used in part 75 but that are not defined in § 72.2 (the definitions section for all Acid Rain Program regulations). Also, some of the existing definitions in § 72.2 are incorrect or incomplete. To address these concerns, the proposed revisions would add or modify several definitions.

1. How Does EPA Propose To Revise the Definitions of Pipeline Natural Gas and Natural Gas in § 72.2?

Background. Following the May 26, 1999, rulemaking, a utility group sued EPA over the definitions of ''pipeline natural gas'' and ''natural gas'' contained in § 72.2. The issue is that gaseous fuel must meet a two-fold requirement to qualify as one of these fuels. In the current rule, there is an H_2S content limit (0.3 gr/100 scf for pipeline natural gas and 1.0 gr/100 scf for natural gas) and a requirement that H_2S constitute more than 50 percent of the total fuel sulfur content. Appendix D to the rule does not explain how to comply with the second of these two requirements (the H_2S as a percentage of total sulfur requirement). Further, industry members are concerned that this requirement cannot be implemented in a fair and consistent manner. For example, a very clean fuel with 0.1 gr/100 scf of H_2S and 0.3 gr/100 scf of total sulfur would not qualify as pipeline natural gas, because H_2S is less than 50 percent of the total sulfur content, but a fuel with three times more H_2S and twice as much total sulfur (0.3 gr/100 scf of H_2S and over 0.6 gr/100 scf of total sulfur) would qualify as pipeline natural gas under the current rule. In response to the industry's concerns, EPA recently issued guidance on how to demonstrate compliance with the H_2S content limit. As explained in the guidance, EPA also granted a petition allowing owners or operators to meet total sulfur limits in lieu of the H_2S percent of-total-sulfur requirement.

Discussion of Proposed Changes. The proposed rule would revise the definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2. All references to H_2S content would be removed and these fuels would be defined in terms of total sulfur content. For the purposes of determining SO_2 emissions, it makes no difference whether the fuel's sulfur is in the form of H_2S or any other form. The proposed total sulfur content values are 0.5 gr/100 scf or less for pipeline natural gas and 20.0 gr/100 scf or less for natural gas. EPA chose the value of 0.5 gr/100 scf for pipeline natural gas so that typical supplies of pipeline natural gas that have an average sulfur content of 0.2 to 0.3 gr/100 scf will consistently yield samples below this cutoff of 0.5 gr/100 scf. In addition, SO_2 emission rates calculated using this value will not be much higher than the rate of 0.0006 lb SO_2 /mmBtu for pipeline natural gas that EPA used to compute allocations for sources combusting pipeline natural gas. The value of 20.0 gr/scf is the maximum total sulfur content allowed under most contracts for transmitting pipeline natural gas and allowed under most tariffs established with the Federal Energy Regulatory Commission.

In addition, appendix D, sections 2.3.1.4 and 2.3.2.4 would be revised to require initial and periodic sampling to document the total sulfur content of the fuel. The revised rule would require periodic sampling on a semiannual basis, as well as whenever it is reasonable to believe that the composition of the fuel supply has changed. For fuels that qualify as pipeline natural gas, the 0.0006 lb/mmBtu default SO_2 emission rate would be used, and for fuels that qualify as natural gas, an SO_2 emission rate would be calculated based on Equation D–1h in appendix D. Note that Equation D–1h would be revised to be based upon the total sulfur content of the fuel, rather than the H_2S content.

2. How Does EPA Propose To Change the Definitions of Unit and Stack Operating Hours?

Background. The current rule allows quality-assurance (QA) test exemptions and deadline extensions for continuous emission monitors, based on the amount of unit operation. Grace periods are also allowed to complete missed QA tests. To qualify for QA test extensions and exemptions, an owner or operator must determine whether there are at least 168 unit or stack operating hours in the quarter (so that the quarter meets the definition of a ''QA operating quarter''). The length of grace periods is also determined on a unit or stack operating hour basis. The rule defines ''unit operating hour'' and ''stack operating hour'' in such a way that partial operating hours are counted as full hours. This is counterintuitive to the way that source operators normally count operating hours. They normally count cumulative operating time so that 30 minutes of operation equals 0.5 operating hours, not 1.0 hours.

Discussion of Proposed Changes. Definitions of ''cumulative stack operating hours'' and ''cumulative unit operating hours'' would be added to § 72.2. The definitions of ''QA operating quarter'' and'' fuel flowmeter QA operating quarter'' would be revised to put them in terms of cumulative unit or stack operating hours. Finally, all references to the length of grace periods would be changed to be in terms of cumulative unit operating hours or cumulative stack operating hours.

3. What Other Definitions Would Be Revised or Added to the Rule?

Background. There are several definitions in § 72.2 that are either unclear or inconsistent with the way in which part 75 has been implemented. In addition, some terms that are used in the Acid Rain Program Policy Manual and the EDR v2.1 Instructions are not defined in the rule.

Discussion of Proposed Changes. Under the proposal, EPA would add definitions of ''common pipe,'' ''common pipe operating time,'' ''diluent cap value,'' ''fuel flowmeter system,'' ''fuel usage time,''''multiple stack configuration,'' ''stack operating time,'' and ''unit operating time.'' These terms are all used in part 75 and the accompanying guidance materials, but are not defined in § 72.2. EPA believes these terms should be defined because they are terms of art as used in various sections of part 75.

Finally, the definitions of ''continuous emission monitoring system or CEMS,'' ''emergency fuel,'' ''heat input,'' ''hour before and after,'' ''maximum potential NO_X emission rate,'' ''maximum rated hourly heat input,'' ''missing data period,'' ''monitor accuracy,'' ''stack operating hour,'' and ''unit operating hour'' would be revised. See the technical support document (Docket A–2000–33, Item II–A–2) for an explanation of these technical changes.

B. Certification Timeline Issues

1. What Is the Deadline for an Application for Initial Certification?

Background. The current rule specifies different monitor certification timelines in § 75.4, for new units, new

stacks, and deferred units. New units must certify their monitors within 90 calendar days after the unit commences commercial operation. Similarly, for newly affected units, owners or operators have 90 calendar days from the date on which they become Acid Rain affected units to certify monitors. Also, when a new stack or flue gas desulfurization system (FGD) is constructed, the owner or operator has 90 calendar days from the date on which emissions first exit to the atmosphere through the new stack or FGD to install and certify continuous monitoring systems. However, for deferred units (affected units that were in cold-storage on their compliance deadline), owners or operators have either 45 operating days or 180 calendar days (whichever occurs first) to certify monitors after recommencing operation. The 90 calendar day timeline has proven to be problematic, particularly for new units that experience mechanical problems when they first begin operating. The deferred unit timeline has greater flexibility.

Discussion of Proposed Changes. EPA proposes to make all of the timelines the same for deferred units, new units, new stacks, and newly affected units. In all cases, the certification deadline would be the earlier of 90 unit operating days or 180 calendar days after the unit commences commercial operation or recommences operation. Paragraphs (b), (c), (d), and (e) of § 75.4 would be revised to incorporate this change. Corresponding changes would be made to 40 CFR 97.70, the monitoring and reporting sections of the January 18, 2000, final section 126 rule, in order to make the certification timelines in parts 75 and 97 consistent.

2. For an Appendix E Peaking Unit, When Is Initial Certification Required While Combusting the Backup Fuel?

Background. The current rule specifies in § 75.4(f) that for an appendix E unit for which certification testing prior to the applicable deadline has been done only while combusting the primary fuel, certification tests using backup fuel must be completed within 30 unit operating days after the backup fuel is first combusted following the certification deadline.

Discussion of Proposed Changes. The proposal would revise § 75.4(f) to state that certification is required within the earlier of 90 unit operating days or 180 calendar days after the backup fuel is first burned following the initial certification deadline. This revised timeline is consistent with the changes to the timelines in § 75.4, paragraphs (b), (c), (d), and (e) in today's proposed rule.

3. What Happens if a Unit Loses Peaking, Gas-Fired, or LME Status?

Background. Under the current rule, when an appendix E unit loses its status as a peaking unit, a NO_X CEMS must be installed by December 31 of the following calendar year. Similarly, loss of gas-fired unit status requires (in some cases) installation of a COMS by December 31 of the following year. Loss of low mass emissions (LME) unit status under § 75.19 requires monitoring systems to be installed within two quarters after the quarter in which LME status is lost. The LME requirement appears to be inconsistent with the others in that it contains a shorter timeline to install and certify monitoring systems. In addition, when peaking unit or LME status is lost, the rule does not provide specific instructions regarding what emission values to report if the deadline for certifying monitors is not met.

Discussion of Proposed Changes. For units that lose their LME status, EPA proposes to change the deadline in § 75.19(b)(2) for monitor certification to December 31 of the year after the year in which the unit exceeded the LME applicability threshold(s), thus making the monitor certification timeline the same as the timelines in §§ 75.12(d)(2) and 75.14(c) for, respectively, loss of peaking unit status and loss of gas-fired status. In the period from the time of loss of LME status until the certification deadline, units would continue to monitor and report in accordance with the provisions for LME units.

Today's proposed rule also includes provisions in §§ 75.19(b)(2), 75.12(d)(2), 75.71(d), and appendix E, section 1.1 that would specify the emission reporting requirements when LME status or peaking unit status is lost and the monitor certification deadline is not met. For loss of peaking unit status, the maximum potential NO_X emission rate would be reported after the CEM certification deadline. For loss of LME status, SO_2 and CO_2 emissions would be reported after the deadline using the applicable LME default emission rate and the maximum potential hourly heat input, and NO_X emissions would be reported using the fuel specific maximum potential NO_X emission rate.

C. Missing Data

1. How Will the Proposed Rule Affect the Missing Data Procedures in §§ 75.31 Through 75.37 for Units That Produce Electrical or Thermal Output?

Background. The part 75 CEMS missing data procedures in §§ 75.31 through 75.37 require the use of substitute data values for each unit operating hour in which quality-assured data are not obtained, either from a certified CEMS, a reference method, or an approved alternative monitoring system. The method of determining the appropriate substitute data values depends principally on two things: (1) The length of the missing data period; and (2) the percent monitor data availability at the end of the missing data period. In some cases, the substitute data value is simply the arithmetic average of the CEMS hourly averages recorded before and after the missing data period. In other cases, the substitute data value is either the 90th percentile value, the 95th percentile value, or the maximum value in a historical lookback period consisting of a certain number of quality-assured monitor operating hours (the previous 720 hours of quality-assured data for SO_2, CO_2, and moisture, and the previous 2,160 hours of quality-assured data in a particular load range (''load bin'') for NO_X and flow rate). Finally, if, at the time of the missing data period, the percent monitor data availability is below 80 percent, the appropriate maximum potential value must be reported for each hour of the missing data period.

The part 75 missing data procedures do not take into consideration the type of fuel combusted. Rather, a single database of quality-assured monitor operating hours is maintained for each monitored parameter (SO_2, NO_X, flow rate, etc.) in order to provide substitute data values when a historical lookback is required. For a unit that combusts different types of fuel having significantly different emission levels for a particular parameter (e.g., for a unit which can burn either coal or natural gas, the SO_2 emissions are much higher when coal is burned), the substitute data values obtained in a historical lookback may not be representative of the actual emissions during the missing data period.

For units with add-on SO_2 or NO_X emission controls, § 75.34 in the current rule allows three missing data options. The owner or operator may either: (1) Use the standard missing data procedures, if the controls are documented to be operating properly, or otherwise use maximum potential

values; or (2) petition the Administrator to use the maximum controlled emission rate recorded in the previous 720 quality-assured monitor operating hours, if the percent monitor data availability is below 90 percent and if the controls are documented to be operating properly during the missing data period; or (3) petition the Administrator to use site-specific parametric monitoring procedures for missing data substitution. These missing data options have proven to be difficult to implement and lack flexibility. The representativeness of the substitute data values derived from these procedures, particularly for Options (1) and (3), is also uncertain.

Option (1) requires parametric data to be recorded during missing data periods to document proper operation of the add-on emission controls, in order to justify using the standard missing data procedures. The parameters selected and the acceptable ranges for the parameters must be documented in the QA plan for the unit. The designated representative must submit a certification statement in the electronic quarterly report, affirming that the emission controls operated within the acceptable parametric ranges during each missing data period and that use of the standard missing data procedures is appropriate. This approach to missing data substitution is problematic because currently there are no clear guidelines, either in the rule or in EPA policy guidance, for selecting the appropriate parameters or the acceptable parametric ranges. Therefore, it is difficult to establish whether the emission controls are actually working properly during a missing data period, even if parametric data have been recorded and are available for auditing purposes. Further, when the standard missing data procedures are used, the substitute data values derived from historical lookbacks may not be representative of the actual emissions during the missing data period, because the historical databases used for the lookbacks include all quality-assured CEMS data, for both controlled and uncontrolled operation.

Option (2), above, is difficult to implement administratively, because it requires a petition every time the owner or operator wants to use a missing data value based solely on data recorded during hours when the emission controls were working, instead of using the standard missing data routines. Use of this missing data option could therefore require a petition to be submitted to and answered by EPA every quarter.

To date, no units in the Acid Rain Program have petitioned to use Option (3), above.

Discussion of Proposed Changes. Today's proposed rule would revise the part 75 missing data procedures to allow missing data substitution to be done on a fuel-specific basis. Also, for units with add-on SO_2 or NO_X emission controls, EPA proposes to revise § 75.34 to include a new missing data option, based on the operating status of the emission controls. Note that the use of these new rule provisions would be optional. Therefore, sources using the missing data provisions in the current rule could continue to do so.

Today's proposed rule would add fuel-specific missing data provisions to § 75.33, in five new paragraphs, (b)(5), (b)(6), (c)(7), (c)(8), and (c)(9). These provisions would allow the owner or operator to create and maintain separate databases for each type of fuel combusted in the unit, for missing data purposes. Substitute data values would be derived from the appropriate database, depending on the type of fuel being burned during the missing data period. To use these new provisions, the owner or operator would be required to determine fuel-specific maximum potential values for concentration, emission rate, or flow rate (as applicable).

The owner or operator would be allowed to switch to the new fuel-specific missing data procedures at any time. Until the requisite number of hours of quality-assured fuel-specific data were recorded for the lookback periods (either 720 or 2,160 hours), the owner or operator would use all available data in the databases for the lookbacks.

For units with add-on controls, the proposed rule would retain the missing data option in § 75.34(a)(3), allowing the owner or operator to petition to use a site-specific parametric missing data substitution procedure. The owner or operator could also continue using the missing data option in § 75.34(a)(1), which allows the standard missing data procedures to be used for hours in which proper operation of the emission controls is documented by means of parametric data, and requires maximum potential values to be reported for all other missing data hours. Note, however, that the proposed rule would expand and clarify the way in which parametric data are used to document proper operation of the add-on emission controls, as explained below in the discussion of the changes to § 75.34(a)(2).

Today's proposed rule would significantly revise § 75.34(a)(2), to allow the owner or operator of a unit with add-on SO_2 or NO_X emission controls (including units equipped with dry low- NO_X technology) to create and maintain two separate databases, controlled and uncontrolled, for missing data purposes. Any hour in which the add-on controls are documented to be operating (on) would be included in the controlled database. Any hour in which the controls are not operating (off) would be included in the uncontrolled database. For units with more than one type of add-on controls (e.g., steam injection plus SCR), hours in which any of the add-on controls operate would be included in the controlled database. Alternatively, the uncontrolled database could consist of either: (a) quality-assured data recorded by a certified monitor at the control device inlet; or (b) for a unit with a main stack and a bypass stack, quality-assured data recorded by a certified monitoring system installed on the bypass stack.

If the proposed missing data option in § 75.34(a)(2) were selected, then, whenever a historical lookback was required, the substitute data value for each hour of the missing data period would be taken from the appropriate database (controlled or uncontrolled), depending on whether the emission controls are documented (by means of parametric data) to be operating properly during the hour. For the SO_2 missing data algorithms in § 75.33, paragraphs (b)(1)(i) and (b)(2)(i), which require the hour before and hour after average value to be reported rather than performing a historical lookback, proposed § 75.34(a)(2) would restrict the use of the hour before and hour after value to missing data hours in which the emission controls are documented to be operating properly; otherwise, the maximum uncontrolled value recorded in the previous 720 hours would be reported. The owner or operator would be required, under § 75.58(b)(3), to keep records of the operational status (on or off) of the emission controls for all unit operating hours, and to keep records of the parametric data recorded during periods of missing SO_2 or NO_X data. The designated representative would also be required to submit a certification statement in the quarterly report, verifying that the add-on controls were operating properly during each missing data hour in which substitute values from the controlled database were reported, or, for SO_2, each missing data hour in which the average of the hour before and hour after values was reported.

The owner or operator of a unit with add-on emission controls would be allowed to switch to the missing data

procedures in § 75.34(a)(2) at any time. If, at the time of the change, the standard missing data procedures of § 75.33 are already in use, and if hourly calculation of percent monitor data availability (PMA) is being performed according to § 75.32, it would not be necessary to repeat the initial missing data procedures of § 75.31. Rather, calculation of the PMA could continue uninterrupted and the two emission databases (controlled and uncontrolled) could be created prospectively. Alternatively, the databases could be created from historical CEM data, if records are available to document the operating status (on or off) of the add-on controls during each quality-assured monitor operating hour. Until the requisite number of hours of quality-assured data for the lookback periods are recorded (i.e., either 720 or 2,160 hours), the owner or operator would use all available data in each database for the lookbacks.

Section 75.34(d) of the proposed rule would expand and clarify the way in which parametric data are used to document proper operation of add-on emission controls during periods of missing SO_2 or NO_X data. According to § 75.58(b)(3)(ii) of the current rule, ''proper operation'' of the controls means that parametric data were recorded during the missing data period, indicating that, ''all parameters * * * [were] * * * within the ranges specified in the quality assurance/quality control program.'' EPA believes that in view of today's proposed substantive changes to § 75.34, this regulatory language is inadequate, because it gives no guidelines concerning which parameters to monitor or how to determine the acceptable parametric ranges.

EPA therefore proposes to revise § 75.34(d), as follows. The owner or operator of a unit with add-on controls would, for missing data purposes, still be required (as in the current rule) to document in the QA/QC program for the unit the parameter(s) monitored and the acceptable parametric ranges and combinations of parameters which indicate proper operation of the emission controls. However, for units that use a control method involving injection of water, steam, or chemical reagents into the combustion chamber or flue gas stream (e.g., limestone injection, limestone scrubbing, water injection, steam injection, SCR, or SNCR) today's proposed rule would require at least one key parameter to be monitored during missing data periods, to document proper emission control operation. A key parameter would be one that has a direct relationship to control device removal efficiency, such as the water-to-fuel ratio, the ammonia injection rate, or the slurry flow rate.

Further, proposed § 75.34(d) would require the owner or operator to establish a demonstrable correlation between the parametric data and control device removal efficiency, as part of the QA/QC program for the unit. The correlation would be based on parametric data recorded during unit operation, when the add-on controls are in-service and the SO_2 or NO_X monitor at the control device outlet is providing quality-assured data. The correlation would be derived from a minimum of 720 hours of data, obtained at various load levels, representing the range of operation of the unit. The correlation would serve as the basis for determining whether substitute data values should be taken from the controlled database or from the uncontrolled database during periods of missing SO_2 or NO_X data. Finally, the owner or operator would be required to provide to EPA or to the State, upon request, either the parametric data recorded during missing data periods or the related QA/QC program information (or both).

EPA believes that the new proposed missing data option in § 75.34(a)(2), which conditionally allows the use of substitute data values taken from a controlled database, would be sufficiently protective of the environment, for two reasons. First, if the add-on controls were not working properly when flagged as being on, emissions would be higher than normal. These high emission values would be recorded by the CEMS and would become part of the controlled database. This would result in conservatively high substitute data values being obtained from the historical lookbacks and applied to controlled missing data hours. Second, the proposed revisions to § 75.34(d), requiring the owner or operator to monitor key parameters for certain types of controls and to develop an actual correlation between the parametric data and the removal efficiency of the control device, would provide reasonable assurance that the emission controls are operating properly during missing data periods.

2. How Will Subpart H Missing Data Provisions Be Affected for Units That Produce Electrical or Thermal Output?

Background. The missing data procedures for subpart H units are specified in §§ 75.70(f) and 75.74(c)(7). Section 75.70(f) requires the missing data procedures in subpart D of part 75 (§§ 75.31 through 75.37) to be used for sources that report emission data on a year-round basis. Section 75.74(c)(7) also requires subpart H sources that report data on an ozone season-only basis to use the missing data procedures of subpart D, except that: (1) Only data from within the ozone season are to be used in the historical lookbacks; and (2) when a fuel combusted in the current ozone season has a higher NO_X emission rate than the fuel(s) burned in the previous ozone season, or when a unit's add-on controls are not working properly (as indicated by recorded parametric data), the maximum potential NO_X emission rate (MER) must be reported.

Discussion of Proposed Changes. Because owners and operators of subpart H units are required to use the initial and standard missing data procedures in §§ 75.31 through 75.37, all of today's proposed changes to those sections would apply to subpart H units. Therefore, the owner or operator of a subpart H unit could elect to use either the new fuel-specific missing data procedures in § 75.33 or, for units with add-on emission controls, the new missing data procedure in proposed § 75.34(a)(2).

Today's proposed rule would also revise § 75.74(c)(7), the section which provides the missing data procedures for subpart H sources that report emission data only during the ozone season, rather than on a year-round basis. EPA proposes to make three substantive revisions to that section.

First, § 75.74(c)(7)(ii) would be revised to require reporting of the MER only when sufficient, prior quality-assured NO_X emission data are not available for combustion of a new fuel that has a higher NO_X emission rate than any fuel burned in the previous ozone seasons. Once sufficient quality-assured emission data are obtained for the new fuel, it would no longer be necessary or appropriate to report the MER, as NO_X emission data for the new fuel would be in the missing data banks, and the standard, historical lookbacks could be used to provide representative substitute data values.

Second, EPA proposes to remove from § 75.74(c)(7)(ii) the requirement to report the MER when the NO_X emission controls are not working properly, as indicated by parametric data recorded under § 75.74(c)(8). The requirement to report the MER when the emission controls are not working properly is associated with the missing data option in § 75.34(a)(1) and is found in that section. Therefore, it is unnecessary to restate the requirement in subpart H. Since proposed § 75.74(c)(7)(ii) requires subpart H units that report data on an ozone season-only basis to use the missing data procedures in §§ 75.31

through 75.37, owners and operators of such units must follow the missing data provisions in § 75.34 if the units have add-on NO_X emission controls. This includes the provision in § 75.34(a)(1), if that missing data option is selected, requiring the MER to be reported when proper operation of the NO_X emission controls cannot be documented.

Third, today's proposed rule would add a new paragraph (iii), with subparagraphs (A) through (M), to § 75.74(c)(7), explaining how to apply the initial and standard part 75 missing data procedures in §§ 75.31 through 75.37 on an ozone season-only basis. EPA is adding these provisions to subpart H because the part 75 missing data routines are designed for sources that report emission data on a year-round basis. For example, for all of the part 75 standard missing data routines that use 720 or 2,160 hour historical lookbacks to determine the appropriate substitute data values, the databases for the lookbacks consist of quality-assured CEMS data that have been recorded throughout the year. Also, the percent monitor data availability (PMA) calculations described in § 75.32 are always based on a particular number of unit operating hours, either the number of unit operating hours since initial certification, or the number of unit operating hours in the past three years, or the previous 8,760 unit operating hours. The number of unit operating hours used in the PMA calculations includes operating hours from all four calendar quarters of the year.

Section 75.74, paragraph (c)(7)(i) clearly states that for subpart H sources that report data on an ozone season-only basis, only data from within the ozone season are to be included in the missing data routines. Thus, as written, the missing data procedures in subpart D of part 75, which use data from all twelve months of the year, are incompatible with the requirements of § 75.74(c)(7)(i). Despite this, EPA believes that there is a relatively simple way to resolve this inconsistency in the rule, as discussed in the following paragraphs.

Section 75.74, paragraph (c)(7)(iii) in today's proposed rule would modify the initial and standard part 75 missing data procedures in §§ 75.31 through 75.37 to adapt them to sources that report emission data only during the ozone season. This adaptation is possible because there is a commonality between year-round reporting and ozone season-only reporting—in both cases there is a discrete time period used for compliance determination. For year-round reporters, that time period is the calendar year, and for ozone season-only reporters, the compliance time period is the ozone season. This commonality allows the missing data instructions for ozone season-only reporters to be written in a parallel manner to the missing data procedures for year-round reporters.

Paragraphs (A) through (M) in proposed § 75.74(c)(7)(iii) provide the necessary parallel rule language to adapt the missing data provisions in §§ 75.31 through 75.37 to ozone season-only reporters. The following is a summary of the essential elements of these proposed rule provisions:

- Use of the initial missing data procedures in § 75.31 would commence with the first operating hour in the first ozone season for which emission reporting is required.
- For initial missing data purposes and for the historical data lookbacks required under § 75.33, phrases such as ''720 quality-assured monitor operating hours'' would be replaced with phrases such as ''720 quality-assured monitor operating hours within the ozone season.''
- For PMA calculations, phrases such as ''total unit operating hours'' would be replaced with ''total unit operating hours within the ozone season.'' Also, ''8,760 unit operating hours'' (the number of hours in a calendar year) would be replaced with ''3,672 unit operating hours'' (the number of hours in an ozone season).
- For both PMA calculations and historical lookbacks, the phrase ''three years (26,280 clock hours)'' would be replaced with ''three ozone seasons.''

3. What Are the Missing Data Requirements for Units That Do not Produce Electrical or Thermal Output?

Background. Today's proposed rule would add missing data procedures to part 75 for units that do not generate electricity or produce steam load. The new missing data provisions would be added to §§ 75.31 and 75.33, to appendix C of part 75, and to section 2.4 of appendix D. The rationale for these new provisions and a discussion of the provisions are presented in the following paragraphs.

As stated in Section II of this preamble, one of the main objectives of today's proposed rule is to modify the existing monitoring and reporting sections of parts 72 and 75 which support emission control programs that use the monitoring and reporting provisions of part 75, such as State NO_X reduction programs developed in response to the October 27, 1998 SIP call. Under the NO_X SIP call, States have the flexibility to include stationary sources other than electric generating units in their NO_X reduction plans. For example, the State of New York has proposed regulation 204 to control emissions of nitrogen oxides from stationary sources. The sources affected by this regulation include EGU and non-EGU sources, such as industrial boilers and cement kilns. To comply with sections 204–8 of this regulation, all of the affected units must monitor and report NO_X mass emissions according to subpart H of 40 CFR part 75, beginning on May 1, 2002. Other States, including New Jersey, Pennsylvania, Maryland, Delaware, and Massachusetts have proposed, or may be proposing, similar rules which require some non-electric generating units to monitor according to subpart H of part 75. To date, EPA has identified three non-EGU source categories that would likely be subject to part 75 monitoring and reporting under the various State rules: industrial boilers, refinery process heaters, and cement kilns.

At the request of the New York State Department of Environmental Conservation, EPA examined the part 75 monitoring provisions to assess whether these provisions are adequate for determining NO_X mass emissions from non-electric generating units. As a result of this assessment, EPA concluded that for industrial boilers, which produce thermal output (i.e., steam load) and which are very similar to electric utility boilers, no significant changes to the monitoring and reporting provisions of part 75 would be required. However, for cement kilns and refinery process heaters, which do not produce electricity or steam load, EPA has identified three key areas where modifications to the existing part 75 monitoring provisions would be necessary to allow full and complete monitoring of NO_X mass emissions. These areas are:

- Determination of the maximum potential concentration (MPC) for NO_X;
- The missing data routines for NO_X concentration, NO_X emission rate, stack flow rate, and fuel flow rate; and
- RATA load level requirements.

Discussion of Proposed Changes. To address the first issue (NO_X MPC determination), EPA is proposing to add default MPC values for process heaters and cement kilns to part 75. The selected MPC values and the rationale for them are found in section III.F.3 of this preamble. The third issue (RATA load level requirements) is discussed in detail in section III.F.10 of this preamble. To address the second issue (missing data routines), EPA is proposing to add non-load-based missing data procedures to part 75, as previously noted.

The missing data procedures in part 75 for NO_X, stack flow rate, and fuel flow rate are load-based. That is, all of the quality-assured hourly data recorded by part 75 NO_X monitors, flow monitors, and fuel flowmeters are segregated into load ranges (or ''bins''). The purpose of using the load bin approach is to ensure that representative substitute data values are provided during periods of monitor downtime (i.e., for each missing data hour, the appropriate substitute data value is taken from the corresponding load bin). However, for units that do not produce electrical or thermal output, the current part 75 missing data procedures for NO_X, stack flow rate, and fuel flow rate are inadequate.

The missing data procedures for non-load-based units in today's proposed rule are the result of discussions between EPA and representatives of the cement industry. The Agency had received a letter on August 20, 1999, from the American Portland Cement Alliance (APCA) (*see* Docket A–2000–33, Item II–D–1), containing a proposed methodology for performing missing data substitution for NO_X and flow rate at cement kilns. EPA responded to this draft proposal in a letter to APCA dated April 24, 2000 (*see* Docket A–2000–33, Item II–C–2). In that response letter, the Agency expressed agreement with some, but not all, of the provisions of APCA's proposal. The missing data approach outlined in today's proposed rule for non-load-based units reflects EPA's stated position in the April 24, 2000, letter to APCA.

The proposed non-load-based missing data routines are modeled after, and are much the same as, the existing routines for load-based units. However, there are two important differences:

- The owner or operator of a non-load-based unit would have the choice of either not using bins at all or using ''operational bins'' to segregate the quality-assured NO_X, stack flow rate, or fuel flow rate data; and
- For a non-load-based unit, the arithmetic average of the previous 2,160 quality-assured hours of NO_X concentration or NO_X emission rate (as applicable) would be used in the standard NO_X missing data routines, instead of the arithmetic average of the values from the hour before and hour after the missing data period.

The reason for allowing the use of operational bins is to give affected facilities the flexibility to customize their missing data routines, based on plant operational parameters and conditions that affect NO_X emissions, stack flow rate, or fuel flow rate. The procedures and requirements for defining operational bins are found in proposed new sections 3 and 4 of appendix C to part 75. The owner or operator would be required to provide a complete description of each operational bin in the hardcopy portion of the monitoring plan required under §§ 75.53(e)(2) (for NO_X and stack flow rate) or 75.53(f)(1)(ii) (for fuel flow rate). The description of each operational bin would include the unique combination of parameters and operating conditions associated with the bin and an explanation of the relationship between these parameters and conditions and the magnitude of the NO_X emissions, stack flow rates, or fuel flow rates. When using operational bins, it would be necessary to monitor the parameter(s) and operating conditions used to define the operational bin. For any hour in which essential operating or parametric data are unavailable and the operational bin could not be determined, the proposed non-load-based provisions in §§ 75.31 and 75.33 and section 2.4 of appendix D would require maximum potential values to be reported.

In response to a recommendation by the cement industry, EPA proposes to use the average of the previous 2,160 quality-assured hours of NO_X data in the standard missing data routines for non-load-based units instead of using the average of the hour before and hour after values. APCA advocated this approach in the previously mentioned missing data proposal that was sent to EPA on August 20, 1999. EPA agrees with APCA's position that hour-to-hour variability of NO_X emissions from a cement kiln is high, and using the hour before and hour after average could cause significant underestimation or overestimation of emissions.

4. How Will Today's Proposed Rule Revise the Procedures in Appendix C for Establishing Load Ranges (or ''bins'') for Missing Data Purposes?

Background and Discussion of Proposed Changes. Today's proposed rule will revise section 2.2.1 of appendix C to clarify the method of determining the maximum hourly average gross load (MHGL) for cogeneration units or other units for which some portion of the heat input is not used to produce electricity. The MHGL for such units would be determined by converting the maximum rated hourly heat input of the unit to an equivalent electrical output in megawatts. The maximum rated hourly unit heat input would include the maximum potential heat input from auxiliary combustion sources, such as duct burners or auxiliary boilers. The efficiency of the unit would be used in conjunction with the maximum unit heat input to calculate the MHGL. If the actual efficiency of a particular combustion source is unknown, a default efficiency of 50 percent would be used for a combustion turbine, and 33 percent for any other type of combustion source. Having established the maximum hourly gross load, the missing data load ranges would then be determined as percentages of the MHGL.

5. How Will the Maximum Potential Moisture Provision Be Revised?

Background. For units for which you continuously account for the stack gas moisture content with a moisture monitoring system, substitute data must be reported whenever an hourly moisture reading is missing. When a moisture monitoring system is uncertified, and when the percent monitor data availability for moisture drops below 80 percent, the maximum potential moisture percentage or the minimum potential moisture percentage must be reported (depending upon which emission and heat input rate equations are used). For the minimum potential moisture percentage, the rule specifies that the value may be determined from quality-assured CEM data or a default value of 3 percent H_2O may be used. However, to determine the maximum potential moisture percentage, the rule requires quality-assured CEM data to be used—no default value is specified.

Discussion of Proposed Changes. The proposal would add a second option to section 2.1.6 of appendix A, allowing the use of a default maximum potential moisture value of 16 percent H_2O. This revision would treat maximum and minimum potential moisture values on a consistent basis for substitute data purposes.

6. How Will the Proposed Rule Affect the Method of Determination Codes?

Background. Two method of determination codes, MODC values ''13'' and ''15'' from Table 4a under § 75.57, became inactive as of January 1, 2000. Also, today's proposed rule would add provisions that require new MODCs that do not appear in the current version of Table 4a.

Discussion of Proposed Changes. EPA proposes to add three new MODC codes, ''21,'' ''22,'' and ''23'' to Table 4a in § 75.57 for use in the electronic data reporting (EDR) format, and to designate the inactive codes ''13'' and ''15'' as ''Reserved.'' MODC 21 would be used when replacing a negative hourly concentration, emission rate, or percent moisture value with zero. MODC 22 would be used when an hourly average

SO_2 or NO_X concentration is reported from a certified monitor at the inlet to an emission control device. MODC 23 would be used when the maximum potential SO_2 concentration, CO_2 concentration, NO_X concentration, NO_X emission rate, or flow rate, or when the minimum potential moisture percentage is reported for an hour in which flue gases are discharged through an unmonitored bypass stack. These changes will make the specific electronic data reporting format elements consistent with the rule.

D. Low Mass Emissions (LME) Units

1. What Are the Certification Requirements for Low Mass Emissions (LME) Units?

Background. In response to concerns raised by both regulated entities and other regulatory agencies, EPA examined the administrative procedures pertaining to LME units in part 75. It was determined that some provisions should be clarified to simplify program implementation and insure that the LME requirements are consistent with other sections of part 75.

Discussion of Proposed Changes. The proposed revisions require the electronic portion of the LME certification application to be sent to EPA Headquarters (the Clean Air Markets Division) and the hardcopy portion to the appropriate Region and State. The proposal would also require LME applications to be submitted no less than 45 days prior to the date on which use of the methodology will commence.

In addition, EPA proposes to remove the references to January 1, 1997, in §§ 75.19(a)(2)(ii), 75.19(b)(4), and 75.20(h)(3), as this date has no regulatory or statutory significance. Instead, the use of these provisions would depend upon whether a unit is a new or newly affected unit and to what extent the LME applicability demonstration relies on the use of projected data, instead of actual, historical data. The proposal would also clarify the period of provisional certification for LME units in § 75.20(h)(3), the date on which a qualifying unit begins using the methodology in § 75.19(a)(1)(ii), and the certification application submittal process in § 75.63(a)(1).

2. How Does the LME Methodology Apply to Subpart H Units?

Background. In its current form § 75.19 contains only a limited explanation of the requirements for units subject to subpart H of part 75 (and not covered under the Acid Rain Program) that are using the LME methodology to account for emissions. Note that some of these requirements for subpart H units are the same as those for Acid Rain Program units.

Discussion of Proposed Changes. Paragraphs (a), (b), and (c) of § 75.19 would be revised to distinguish the applicability, on-going qualification, and reporting requirements for Acid Rain Program units and non-Acid Rain Program, subpart H units. The revisions would make a clear distinction between sources that report emission data on a year-round basis and those that report data only during the ozone season. These changes would help owners and operators of non-Acid Rain Program units understand how to comply with the LME requirements. Language was added to clarify that non-Acid Rain Program units using the LME methodology and the provisions of subpart H of part 75 (to comply with the monitoring and reporting requirements of a NO_X mass trading program) must submit NO_X mass emission data, but are not required to submit SO_2 mass emissions data. In addition, language was added to clearly state the initial and ongoing qualification criteria for non-Acid Rain Program units. Specifically, non-Acid Rain Program units for which you choose to report data year round under the LME methodology must emit no more than 50 tons of NO_X annually, while units for which you choose to report only ozone season NO_X mass emission data must emit no more than 25 tons of NO_X each ozone season.

3. When Must the Annual Demonstration for LME Units be Completed?

Background. The current rule does not specifically state the deadline for performing the annual demonstration of LME qualification. EPA believes that a consistent standard should be used for all units every year.

Discussion of Proposed Changes. For a unit to continue to qualify as a LME unit, certain mass emission thresholds must be met on an on-going basis. These thresholds are: 25 tons SO_2 and 50 tons NO_X annually for an Acid Rain Program unit; 50 tons NO_X annually for a non-Acid Rain Program, subpart H unit reporting on a year-round basis; and 25 tons per ozone season for a non-Acid Rain Program, subpart H unit reporting on an ozone season basis only. The owner or operator must demonstrate annually that the unit does not exceed the applicable mass emissions threshold(s). The proposed rule would add language to § 75.19(b)(1) to expressly state that the annual demonstration will be considered complete only when the official data reconciliation process is complete. More specifically, only the final emissions data record for the year or ozone season (i.e., the final accounting of emissions, after data have been fully reconciled and any necessary quarterly report resubmittals have been made) will be used to determine whether a unit has met the applicable mass emissions threshold and satisfied the LME qualification requirements.

4. How Should EPA Reference Method 20 Be Altered When Determining a Fuel-and Unit-Specific NO_X Emission Rate for an LME Unit?

Background. The Method 20 test procedures require the measured NO_X concentrations to be corrected to 15 percent O2. For units simply determining the NO_X emission rate, this correction is unnecessary because the measured fuel- and unit-specific NO_X emission rate will be the same whether or not the concentration is corrected to 15 percent O2.

Discussion of Proposed Changes. Today's proposal would remove the requirement from § 75.19(c)(1)(iv)(A) that a unit must correct NO_X concentration values to 15 percent O2 when performing Method 20 testing.

5. What Temperature and Humidity Corrections are Required for Turbines When Unit- and Fuel-Specific NO_X Emission Rates are Determined for LME Units?

Background. Beginning in the 1999 ozone season, the Ozone Transport Commission (OTC) NO_X Budget Program required monitoring and reporting of NO_X mass emissions for use in a regional NO_X trading program. Each State participating in the program required monitoring and reporting to be performed according to the ''Guidance for Implementation of Emissions Monitoring Requirements for the NO_X Budget Program'' and the '' NO_X Budget Program Monitoring Certification and Reporting Instructions.'' These documents required reporting of emissions data in the Electronic Data Reporting (EDR) version 2.0 format. Under this program, a large number of small peaking turbines were required to begin monitoring and reporting data in the EDR v2.0 format. This group of units contains simple combustion peaking turbines of 15 to approximately 75 MWh capacity. These units have historically been exempt from the Acid Rain Program monitoring and reporting under either § 72.6(b)(1), an exemption for simple turbines built prior to November 15, 1990, or § 72.7, the new unit exemption. The monitoring and

reporting options allowed for these type of units in the OTC NO_X Budget Program guidance documents are similar to the monitoring and reporting provisions under § 75.19 with some key differences, including the use of a multiplier of 1.15 to all fuel- and unit-specific NO_X emission rates determined using the testing procedures of appendix E. In the preamble to the May 1999 final revisions to part 75, EPA states that the reason for the 1.15 multiplier is that the NO_X emission rate may vary at a given load for any particular unit. In particular, EPA was concerned with possible underestimation of emissions using the results of appendix E testing to determine fuel- and unit-specific NO_X emission rates.

EPA anticipates that the majority of the simple peaking turbine units described above will be required to begin monitoring and reporting data according to the LME provisions under § 75.19 in the future as part of a larger NO_X trading program. Several utilities asked that the LME requirements under § 75.19 be modified to allow removal of the 1.15 multiplier to fuel and unit-specific NO_X emission rates. They argued that the requirement to use a 1.15 multiplier would result in a high overestimation of NO_X emission rates under some circumstances. EPA investigated the causes of variability in NO_X emission rates in turbines by reviewing literature, reviewing test results, analyzing CEMS data for turbines, and by discussing turbine operation with turbine and utility experts (*see* Docket A–2000–33, Item II–B–1). The result of the investigation was confirmation that temperature, pressure, and, in particular, humidity affect the NO_X emission rate in combustion turbines. The investigation revealed that several empirically-derived mathematical algorithms have been developed to correct a measured NO_X concentration to a theoretical NO_X concentration at a different temperature, pressure, and humidity, including the equation in subpart GG, Standards of Performance for Stationary Gas Turbines (§ 60.335).

Discussion of Proposed Changes. The proposal would add a new requirement for certain turbines to correct measured NO_X concentrations using an equation similar to the equation in subpart GG of the New Source Performance Standards (40 CFR part 60), for correcting to the International Organization for Standardization (ISO) standard ambient conditions. This correction, in § 75.19(c)(1)(iv)(A)(4), would apply only to uncontrolled diffusion flame style turbines and would compensate for temperature and humidity effects on NO_X formation by correcting the measured NO_X concentrations at the test conditions to the average annual temperature, atmospheric pressure, and humidity at the location of the turbine. If a unit (including an Acid Rain Program unit) is subject to an ozone season-based NO_X mass emission reduction program, average ozone season values of temperature, atmospheric pressure, and humidity would be used instead of average annual values. The proposed rule suggests (but does not require) using National Oceanic and Atmospheric Administration temperature and humidity data from the weather station at the nearest airport. This provision would prevent underestimation or overestimation of NO_X emissions for uncontrolled diffusion flame turbines. Today's proposal also removes the requirement to multiply the measured NO_X emission rates for such turbines by 1.15, as the new correction equation would make use of the multiplier unnecessary.

6. How Is Identical Unit Status Demonstrated for a Group of LME Units?

Background. The rule currently requires, in § 75.19(c)(1)(iv)(B)(1), that to be considered identical a group of LME units must be of the same manufacturer, model, and size, have the same history of modifications (e.g., the same controls installed), and have similar outlet temperatures under similar operating conditions. Section 75.19(c)(1)(iv)(B)(3) further requires that if there are more than two identical units in the group, the NO_X emission rate of each unit tested must be within 10 percent of the average emission rate for all units tested, at each load level.

Discussion of Proposed Changes. The proposal would delete from § 75.19(c)(1)(iv)(B)(3) the requirement that the emission rate for each unit must be within 10 percent of the group average rate in order for a particular unit to be considered an identical unit. These proposed identical unit provisions in part 75 are based in large part on comparable provisions used under the Ozone Transport Commission (OTC) NO_X Budget Program. Because the OTC requirements for identical units have been effective and have minimized the compliance burdens on LME units, EPA believes that it is appropriate to eliminate the ten percent requirement from the part 75 LME provisions. The criteria in § 75.19(c)(1)(iv)(B)(1) for identifying identical units would be retained, however.

7. How Is the Fuel- and Unit-Specific NO_X Emission Rate Determined for LME Turbines Equipped With Water Injection, Steam Injection, or Water/Fuel Emulsion, and no Other Type(s) of add-on NO_X Controls?

Background. The current LME provisions in § 75.19 include a provision which restricts the use of fuel- and unit-specific NO_X emission rates to be no less than 0.15 lb/mmBtu for units with any type of NO_X emission controls. Use of the 0.15 value ensures that large, highly controlled units would not use the LME provisions for estimating emissions. EPA believes that the LME provisions are inappropriate for units with such controls as SCR or SNCR and that NO_X emission monitoring is the only effective way to determine that a unit achieves its target control level. Industry representatives have asked EPA to consider allowing the use of controlled fuel and unit specific NO_X emission rates below the 0.15 lb/mmBtu minimum for turbines with water injection, steam injection, or water/fuel emulsion. The representatives stated that if the water-to-fuel ratio were monitored each hour, the use of a fuel- and unit-specific default for times when the water-to-fuel ratio were within acceptable limits would not underestimate emissions.

EPA investigated the claims of the industry representatives. EPA reviewed data from CEMS installed at turbines with water and steam injection and water/fuel emulsion. Based on results of the investigation, EPA believes that if the water-to-fuel ratio is monitored, then effective and constant control of NO_X is achieved with little chance of underestimation of NO_X emissions (see Docket A–2000–33, Item II–B–1).

Discussion of Proposed Changes. The proposal would revise § 75.19(c)(1)(iv)(H)(1) to allow the use of measured NO_X emission rates for units with water or steam injection or water/fuel emulsion (and no other type(s) of add-on NO_X controls) even if the emission rates are below 0.15 lb/mmBtu. This removes the current rule requirement that all tested emission rates below 0.15 lb/mmBtu be adjusted upward to a default value of 0.15 lb/mmBtu. The proposed action requires units with steam or water injection to monitor the water-to-fuel or steam-to-fuel ratio in order to give assurance that the emission controls are operating properly, making it unnecessary to use the default value.

8. What Effect Would Today's Proposed Rule Have on LME Units Sharing a Common Fuel Supply?

Background. The current LME provisions require that where a group of units shares a common fuel supply, use the long term fuel flow (LTFF) methodology for heat input, and use a fuel-and unit-specific default NO_X emission rate, the group of units must perform the required testing and use the highest tested NO_X emission rate for all units. EPA has reviewed the requirement for taking the highest NO_X emission rate for all units, found it to be unnecessary, and is proposing to remove the requirement.

Discussion of Proposed Changes. Today's proposal would delete and reserve §§ 75.19(c)(1)(iv)(C)(2) and 75.19(c)(1)(iv)(C)(5). These sections describe unnecessary restrictions for groups of units sharing a common fuel supply and using the long term fuel flow heat input approach. It is highly unlikely that an incorrectly apportioned heat input for units with different efficiencies could lead to improper estimation of emissions. Therefore, EPA proposes to remove these restrictions from the rule. In addition, a source would use the highest rate at each individual unit to calculate emissions from that unit, rather than using the highest NO_X emission rate from the entire group of units.

9. When Would Single Load Testing Be Allowed to Determine Unit- and Fuel-Specific NO_X Emission Rates for LME Units?

Background. The current LME provisions require four load testing for all units which opt to determine a default fuel- and unit-specific NO_X emission rate. Several industry representatives asked that this requirement be waived for units which operate at a single load only. EPA considered two options as alternatives to the four load testing requirement.

Option 1. Require the first appendix E test to be performed at all four loads, then allow future testing to be performed at the load at which the highest NO_X emission rate was found.

Option 2. Allow single load testing for units which submit a demonstration that a unit operates at a single load.

EPA considers option 2 to be preferable. It allows single load testing to be performed as of the first test and can save time and effort, consistent with the intent of the LME provisions to be cost effective and simple to use. EPA solicits comment on these methods or other methods suitable for allowing single load testing to be used for determining fuel- and unit-specific NO_X emission rates.

Discussion of Proposed Changes. EPA proposes to add a new provision to the rule, § 75.19(c)(1)(iv)(I), which would conditionally allow single load testing for a unit which the owner or operator can demonstrate has operated at a single load level for at least 85 percent of the time in the three years prior to the emission test. In addition, the new section would conditionally allow turbines, that operate to a set point temperature and not a given load, to perform single load testing. If a set point turbine is tested at base load, but the unit is capable of operating at a higher (peak) load and is not tested at peak load, the fuel- and unit-specific NO_X emission rate obtained from the base load testing would be adjusted upward using a conservative multiplier of 1.15 to ensure that emissions are not underestimated when the unit operates at peak load.

10. How Are Unit-Specific, Fuel-Specific NO_X Emission Rates for LME Units Determined From the Individual Test Run Data at Each Load Level?

Background. The current LME provisions require the use of the highest emission rate from the appendix E test. This language is not clear in describing whether the value used was the highest reading of any run during the test or the average of the required three runs during the test. In this rulemaking EPA is clarifying its intent that the three run average from a test is the value used as the fuel- and unit-specific default emission rate.

Discussion of Proposed Changes. Today's proposal would revise § 75.19(c)(1)(iv)(C) to clarify the way in which the fuel- and unit-specific NO_X emission rates are calculated for LME units when four load emission tests are performed. The proposal would add new language to that section, explaining how to determine the appropriate NO_X emission rates when single load testing is performed.

For four load testing of an individual LME unit, the appropriate NO_X emission rate would be the highest three-run average obtained at any load level tested. For single load testing, the NO_X emission rate would simply be the three-run average at the load level tested. For four load testing of a group of identical LME units, the appropriate NO_X emission rate would be the highest three-run average obtained for any unit in the group, at any load level tested. For single load testing of a group of identical LME units, the NO_X emission rate would be the highest three-run average obtained for any tested unit.

11. Which Mathematical Equations Are Affected by the Proposed Changes to § 75.19?

Background. Today's proposal would correct several equations pertaining to LME units. These revisions are necessary to correct one equation and to clarify the nomenclature of several other equations.

Discussion of Proposed Changes. The proposed revisions will correct Equation LM–1 and clarify the nomenclature for Equations LM–3, LM–5, LM–6, LM–7, LM–7a, LM–8, and LM–8a.

E. Conditionally Valid Data—Mandatory Use

Background. In the May 26, 1999, revisions to part 75, new CEM data validation provisions were promulgated. One such provision in § 75.20(b)(3) addresses the use of conditional data validation. For recertification testing and diagnostic tests, § 75.20(b)(3) requires that sources use conditional data validation. For initial certifications and routine quality assurance, the rule allows, but does not require, conditional data validation.

Discussion of Proposed Changes. To address the inconsistency in the rule, § 75.20(b)(3) would be revised to make the use of conditional data validation optional in all cases. Appendix A, sections 2.1.1.5(c) and 2.1.2.5(c) and appendix B, sections 2.2.5, would also be revised to reference the amended § 75.20(b)(3).

F. Quality Assurance/Quality Control (QA/QC)

1. What Changes Are Proposed for CEMS Span and Range Evaluations?

Background. Part 75 requires periodic evaluations (at least annually) of the spans and ranges of all required continuous monitors to ensure that the proper span and range values are being used. To perform the annual span/range evaluation, a review of the emission data from the past year is required. The results are acceptable if the data meet the guidelines in section 2.1 of appendix A. The basic requirement of that section is for the majority of the data to be between 20 and 80 percent of the full-scale range, with certain allowable exceptions.

With the increased emphasis in recent years on reducing NO_X emissions, many new combustion turbines are being built. The span/range evaluation guideline in section 2.1 of appendix A does not fully address the issues raised by this type of unit. These units typically have NO_X controls capable of reducing emissions to very low levels (e.g., 20 ppm or less for oil-firing and

less than 10 ppm for gas-firing) and are often required by part 75 to have two measurement ranges (low and high). Some of these units operate their emission controls only on a seasonal basis, rather than year-round. One span and range issue for these units is that when natural gas is combusted, the majority of the NO_X emissions may not meet the 20 to 80 percent guideline of section 2.1 if, for example, the low-scale measurement range is set at 25 ppm based on oil-firing, in accordance with section 2.1.2.3 of appendix A. Further, if gas is the primary fuel in this example and the NO_X emissions are typically 5 ppm or less during gas combustion, one might erroneously conclude during the annual span/range evaluation that the low range needs to be adjusted or that a third monitoring range (e.g., 0–10 ppm) is necessary to measure the gas-fired emissions, in order to meet the section 2.1 guideline. A second issue is that under appendix A, section 2.1, for dual-span units with add-on emission controls, SO2 or NO_X data recorded on the high monitor range are exempted from meeting the 20 to 80 percent guideline. However, this exemption is not appropriate for units with seasonally operated emission controls.

Discussion of Proposed Changes. To address the first issue described above, the proposed rule would clearly state that for dual-span units low-range readings below 20 percent of full-scale are exempted from the 20 to 80 percent guideline, provided that the maximum expected concentration (MEC) and the low-scale span and range values have been determined according to the applicable provisions of appendix A. In the example cited in the Background section above, if the low measurement range of 25 ppm (based on oil-burning) was properly set according to section 2.1.2.3 of appendix A, then re-ranging the low measurement scale would not be appropriate, even if the majority of the data do not fall between 20 and 80 percent of the range when natural gas is combusted. This is because the unit is capable of burning oil, and a low-scale range of 25 ppm, if set according to section 2.1.2.3 of appendix A, is a good choice for that fuel. Nor would it be necessary to establish a third monitoring range. Part 75 was never intended to require more than two monitoring ranges.

To address the second issue described above, the proposed rule would require units that operate their emission controls seasonally to meet the 20 to 80 percent guideline on the high measurement range. The Agency believes it is appropriate for units using their emission controls seasonally (such as a unit that uses SCR during the summer only) to meet the 20 to 80 percent guideline on the high range because emissions data will be recorded on that range for extended periods of time during the year. This is unlike the case in which controls are used year-round, where the source is likely to operate without the controls only on occasion and relatively few readings are recorded on the high scale.

2. Will EPA Allow Use of Two Separate CEM Systems With Separate Probes and Sample Interfaces To Meet Dual-Range Requirements?

Background. For units required to have two spans and ranges for NO_X or SO2, the current rule disallows the use of two separate CEM systems with separate probes and sample interfaces. This option was excluded because dual-span units often use add-on controls and have very low emissions. In many cases, the add-on controls are used year-round, so the emissions remain low virtually all the time. The low emission levels can make it difficult to perform and pass a RATA on the high range. Despite this, EPA has received two petitions requesting permission to use separate systems with separate probes and interfaces to meet a dual-range requirement (*see* Docket A–2000–33; Items II–C–1 and II–D–13). To date, one of these petitions has been approved, for a unit that operates its NO_X controls seasonally.

Discussion of Proposed Changes. Today's proposal would revise appendix A, section 2.1 to conditionally allow the use of separate CEMS with separate probes and interfaces to satisfy dual-range requirements. The condition is that RATAs of both ranges must be performed and passed. The revised rule would also state that the two CEMS should be designated as separate monitoring systems in the monitoring plan.

3. What Changes Would the Proposed Rule Make With Regard to Determining NO_X MPC, MEC, Span, and Range?

Background. EPA receives many questions about the way in which the MPC, MEC, span, and range are determined for NO_X, especially for new combustion turbines. Some of the questioners have requested additional options for MPC and MEC determinations and claim that the rule does not address dry, low-NO_X control technology, which is being used on many new turbines. Others have questioned the appropriateness of the 50 ppm default value for the MPC of new turbines in Table 2–2 of appendix A.

Discussion of Proposed Changes. The proposed rule would clarify the definition of MPC for NO_X, making a distinction between uncontrolled units and units with low NO_X burner technology. The proposal would also revise appendix A, section 2.1 to add a new option for NO_X MPC determination: use of a reliable estimate of the unit's uncontrolled emissions obtained from the manufacturer. A new option for MEC would also be added: use of the federally-enforceable permit limit. The new MEC option could only be used for units that have add-on emission controls or that use dry, low-NO_X technology.

The 50 ppm default MPC value for new turbines in Table 2–2 would be removed and replaced with two new values: (a) 150 ppm for units that are permitted to fire only natural gas; and (b) 200 ppm for units permitted to fire both gas and oil. These values are much more representative of actual NO_X emissions from turbines during unit startup and periods when the emission controls are not operational. EPA requests comment on whether the new values are representative (*see* Docket A–2000–33, Item II–B–2).

Finally, default MPC values would be added to the rule for two categories of non-load-based units: cement kilns and process heaters. As discussed in more detail under section III.C of this preamble, certain States are likely to require these two source categories to report NO_X mass emissions under the NO_X SIP call. For cement kilns, an MPC value of 2,000 ppm is proposed; for process heaters, an MPC value of 200 ppm is proposed for gas-fired units, and 500 ppm for oil-fired heaters. The default MPC value for cement kilns was determined using NO_X emissions data sent to EPA during pre-proposal discussions between the Agency, representatives of cement kilns located in New York, and the Portland Cement Association. NO_X emissions data for seven cement kilns were submitted for review. The data represented more than one year of hourly NO_X concentration values for each of the kilns. EPA selected 2,000 ppm as an appropriate MPC for cement kilns based on the maximum values reported for these units (*see* Docket A–2000–33, Item II–I–3). For process heaters, the Agency evaluated NO_X emissions data submitted in quarterly EDR reports for six process heater units regulated under the OTC NO_X Budget Program. EPA selected the 200 and 500 ppm MPC values based on the maximum NO_X concentration values reported for these units (*see* Docket A–2000–33, Item II–I–3). EPA is proposing the default NO_X

MPC values for cement kilns and process heaters principally because an MPC value would be required in the initial monitoring plan submittal if these units were to become regulated under the NO_X SIP call. None of the default NO_X MPC values in appendix A, section 2.1.2.1 of the current rule are considered to be appropriate for either cement kilns or process heaters, and emission test results or historical CEMS data might not be available at the time of initial monitoring plan submittals from these sources. Therefore, EPA has proposed default NO_X MPC values that can be used for the initial MPC determinations for cement kilns and process heaters.

4. What Revisions Would Be Made to the 7-day Calibration Error Test for Peaking Units?

Background. For gas monitors, the 7-day calibration error test is required only for initial certification, recertification, and occasionally as a diagnostic test. It is not a routine, required periodic QA test. The current rule specifies that the 7-day calibration error test data must be recorded while the unit is operating. For peaking units, the requirement for the unit to be operating during the test can be problematic. Because of the infrequent and unpredictable nature of peaking unit operation, the 7-day test may take weeks or even months to complete.

Discussion of Proposed Changes. Today's proposal would revise the 7-day calibration error test requirement for gas monitors installed on peaking units in appendix A, section 6.3.1, to require data to be recorded for only three of the seven test days with the unit operating. The unit would not be required to operate for the other four days of the test.

5. What Changes Would Be Made to QA/QC for Units With Very low NO_X Concentrations?

Background. The current rule requires owners and operators of units with very low SO2 and NO_X concentrations to perform RATAs and daily calibrations on their CEMS. They are required to perform linearity checks unless the span value is 30 ppm or less (see appendix A, section 6.2). Appendix B to part 75 provides an alternate daily calibration specification for low emitters of SO_2 and NO_X.

With respect to the daily calibrations of SO_2 and NO_X monitors, the allowable calibration error is currently 5 percent of the span value. However, appendix B to part 75 provides an alternate daily calibration specification for low emitters of SO_2 and NO_X. The alternative specification for units with low concentrations (for span values less than 200 ppm) is 10 ppm or less (based on the absolute value of the difference between the tag value of the calibration gas and the instrument response). For most low-emitting sources, the alternate 10 ppm specification is reasonable and provides relief from the 5 percent of span requirement, which is often too stringent at low span values. However, for very low span values, the 10 ppm alternate specification is not stringent enough and needs to be tightened. This is especially important because many of the new Acid Rain-affected gas turbines that are being built have very low NO_X emissions. To illustrate, suppose that for a very low span value of 10 ppm, the upscale calibration gas for daily calibrations is 9 ppm. When the 10 ppm alternate calibration error specification is applied, the monitor could actually be inoperative, read 0 ppm, and the calibration would still be passed.

Discussion of Proposed Changes. Today's proposal would modify the alternate calibration error specification in section 2.1.4(a) of appendix B, for daily operation of SO_2 and NO_X monitors. The 10 ppm alternate specification would be retained for span values greater than 50 ppm but less than 200 ppm. For span values less than or equal to 50 ppm, the alternate specification would be lowered to 5 ppm. EPA believes that a daily calibration error limit of 5 ppm is both reasonable and achievable, in view of the measurement capability of today's gas analyzers. The Agency notes that 5 ppm is also the alternate low-emitter performance specification in section 3.1(b) of appendix A, for initial certification of SO_2 and NO_X monitors.

6. When Would EPA Require the Application of a Calibration Correction Factor to Linearity or RATA Test Data?

Background. After a routine daily calibration error test, many Data Acquisition and Handling Systems (DAHSs) apply a mathematical correction to the subsequent emission data in order to account for the calibration error. When a linearity check or RATA is initiated after a daily calibration, the current rule does not specify whether the mathematical correction factor should be applied to the monitor readings recorded during the linearity test or RATA.

Discussion of Proposed Changes. EPA proposes to add language to sections 2.2.3(c) and 2.3.2(c) of appendix B, requiring that if a mathematical correction factor (calibration adjustment) is applied by the DAHS following a daily calibration error test, the correction factor would be applied to all subsequent data recorded by the monitor until the next calibration error test is performed, including any linearity test or RATA data recorded in that time interval.

7. What Changes Would Be Made to the Flow-to-Load Ratio Test?

Background. In the May 26, 1999, revisions to part 75, a new quarterly QA test for flow monitors was promulgated: the flow-to-load ratio test. Since promulgation, EPA has received many questions about the methodology, relating both to the procedural aspects of how the data analysis is done and to the consequences when the test is failed. As a result, EPA believes it is necessary to clarify the test procedures and to re-evaluate the issue of data validation when the test is failed.

Discussion of Proposed Changes. The proposed rule would allow you to take the data exclusions listed in section 2.2.5(c) of appendix B before analyzing the quarterly flow-to-load data. The current rule appears to require an initial data analysis with no exclusions and to allow owners and operators to claim the data exclusions only when the first analysis results in a failed test. Proposed section 2.2.5(c) also clarifies the issue of co-firing as it pertains to data exclusions. For units that co-fire different fuels as part of their normal operation, you could claim flow-to-load test data exclusions for hours in which fuels were not co-fired if the reference flow RATA at normal load was done while co-firing. Conversely, if the reference flow RATA was done while firing a single fuel, flow-to-load test data exclusions could be claimed for hours in which fuels were co-fired. The proposed rule would also add a statement to section 6.5(a) of appendix A requiring that units which co-fire fuels as the predominant mode of operation perform RATAs while co-firing.

The proposal would change the method of data validation following a flow-to-load ratio test failure. Section 2.2.5(c)(8) of appendix B would allow the flow rate data to be declared conditionally valid, rather than invalid, when a flow-to-load test is failed, pending the results of a follow-up investigation and/or a RATA. This would allow data validation in case a false positive is obtained with the flow-to-load test. If the investigation fails to reveal a problem and a confirming RATA is passed hands-off, no data loss would be incurred. The timeline for investigating a flow-to-load test failure would also be changed from ''within 2

weeks'' to ''within 14 unit operating days.''

The proposal would clarify the instructions for multiple stack configurations and allow you to do the data analysis in one of two ways: (1) Using combined flow and average unit load; or (2) using the flow in each stack and the corresponding unit load.

Finally, section 7.8 in appendix A of part 75 would be revised to exempt non-load-based units (i.e., units that do not produce electrical output or steam load) from the flow-to-load ratio test.

8. When Would Three-Load Flow RATAs Be Allowed for Routine Quality Assurance?

Background. The current rule specifies that an annual two-load flow RATA is required for routine quality assurance of a flow monitor. The rule appears to require two-load testing and to disallow three-load tests for routine QA.

Discussion of Proposed Changes. Today's proposal would clarify in section 2.3.1.3(c) of appendix B that you may perform a three-load RATA in lieu of any required two-load flow RATA.

9. What Changes Would Be Made to the Data Analysis Time Period for Single-Load Flow RATA Claims?

Background. In the May 26, 1999 revisions to part 75, a new provision was promulgated, allowing annual flow RATAs to be done at a single load level. To qualify for the single-load option the source must have operated at one load level (low, mid, or high) for at least 85% of the time since the last annual flow RATA. A historical load analysis must be done to confirm this, extending from the date and hour of completion of the last annual flow RATA to a date no less than seven days prior to the date of the current annual flow RATA. Some utilities have asked if EPA would consider changing this timeline. Two suggestions have been offered: (1) Make the end date of the analysis 21 days ahead of the scheduled RATA date; and (2) include in the analysis all data from the quarter of the last RATA and exclude all data from the quarter of the current RATA.

Discussion of Proposed Changes. EPA believes that the suggested revisions are appropriate and would increase the amount of time available to conduct test planning. The proposal would modify the timeline for the data analysis in section 2.3.1.3(c) of appendix B, to allow data to be analyzed from either: (a) The date/hour of the last annual flow RATA to a date no more than 21 days prior to the current flow RATA; or (b) the beginning of the quarter in which the last annual flow RATA was done, through the end of the calendar quarter preceding the quarter of this year's annual flow RATA.

10. For Units That Do Not Produce Electrical Output or Steam Load, at What Operating Levels Should Gas and Flow Monitor RATAs Be Performed?

Background. For units that do not produce electrical or thermal output (e.g., cement kilns and process heaters), today's proposed rule would provide a method by which to establish the proper ''operating levels'' (as opposed to ''load levels'') at which to perform relative accuracy test audits (RATAs). The proposed methodology is found in section 6.5.2.1 of appendix A. The rationale for, and a discussion of, these proposed rule provisions is presented in the following paragraphs.

Units subject to the monitoring and reporting requirements of part 75 must account for their emissions on a continuous basis. Most units use continuous emission monitoring systems (CEMS) for this purpose. Part 75 requires periodic RATAs of all CEMS to demonstrate that the data recorded by the monitoring systems accurately represent the SO_2, NO_X, and CO_2 emissions from the affected unit. RATAs of gas and flow monitors are required for initial certification and either semiannually or (if the relative accuracy obtained on the previous RATA was ≤ 7.5 percent) annually thereafter.

Section 6.5.1 of appendix A to part 75 requires that RATAs of gas monitors be done at the ''normal'' load level. Section 6.5.2 of appendix A and section 2.3.1.3 of appendix B specify the load levels for flow RATAs. In general, flow monitor RATAs are performed at multiple load levels (either two or three), with a few exceptions (e.g., for flow monitors installed on peaking units, only single-load RATAs are required). For multiple-load flow RATAs, at least one of the tested load levels must be the ''normal'' load level.

The method of establishing the normal load level is found in section 6.5.2.1 of appendix A. First, the owner or operator must determine the ''range of operation'' for the unit or stack. The range of operation extends from the minimum safe, stable load to the maximum sustainable load. Next, the range of operation is divided into three load levels. The first 30 percent of the range of operation is considered to be the ''low'' load level, the next 30 percent of the range is the ''mid'' load level, and the remaining 40 percent of the range is the ''high'' load level. The ''normal'' load level is determined by performing an analysis of at least four quarters of representative historical load data. From these data a distribution graph, such as a histogram, is constructed showing the percentage of the time that each load level has been used historically. The most frequently-used load level (low, mid, or high) is automatically designated as the normal load level. The owner or operator may opt to designate the next most frequently used load level as a second normal load. Thus, the appropriate load levels for the required RATAs of the gas and flow monitors are established.

Discussion of Proposed Changes. As previously discussed in section III.C of this preamble, EPA anticipates that under the NO_X SIP call, sources such as cement kilns or refinery process heaters, which do not produce electrical or thermal output, will become subject to the monitoring and reporting requirements of part 75. Consequently, these sources will be required to perform periodic RATAs of their gas and flow monitors. Because these sources do not produce electrical or steam load, the concept of performing ''normal load'' RATAs cannot be applied to them. Therefore, an alternative RATA approach is needed for these non-load-based units. Today's proposed rule would revise section 6.5.2.1 of appendix A to provide the necessary alternative methodology.

The proposed RATA approach for units that do not produce electrical or steam load would be based on an ''operating level'' concept, rather than a ''load level'' concept. The method of determining the normal operating level for a non-load-based unit would be much the same as the previously-described method for determining the normal load level for a load-based unit. The owner or operator would determine the range of operation, divide it into three operating levels, and perform a data analysis to establish the ''normal'' (i.e., most frequently-used) operating level. The only significant difference between the load-based and non-load-based methodologies is that instead of defining the range of operation in units of electrical or steam load (i.e., in megawatts or klb/hr of steam), the range of operation of the non-load-based unit would be defined in units of stack gas velocity, in ft/sec. The range of operation would extend from the minimum expected velocity to the maximum potential velocity. These minimum and maximum gas velocities could either be determined from reference method test data or by using Equation A–3a or A–3b (as applicable) in section 2.1.4.1 of appendix A to part 75.

EPA is aware that for new or newly-affected units, four quarters of historical load data (for load-based units) or flow rate data (for non-load-based units) may not be initially available to establish the two most frequently-used operating loads (or levels) and the normal operating load (or level). Also, for a non-load-based unit which is not required to install a flow monitor, the necessary flow rate data for the determinations will neither be available initially nor at some point in the future. Therefore, a revision to section 6.5.2.1 (c) of appendix A is proposed, which would allow the initial determinations to be made as follows: (1) For load-based units or for non-load-based units with installed flow monitors, the determinations could be based on less than four quarters of data, or, if no representative historical data are available, projections of how the unit will be operated could be used. Note, however, that as soon as four representative quarters of load or flow rate data are obtained, the determination of the two most frequently-used operating loads (or levels) and the normal operating load(s) (or level(s)) would have to be repeated; or (2) for non-load-based units without installed flow monitors, sound engineering judgment (based on a combination of knowledge of the unit, operating experience, and actual stack gas velocity measurements using EPA Method 2) would be used to make the operating level determinations.

Once the boundaries of the range of operation are established and the normal operating level(s) has been identified, the owner or operator of a non-load-based unit would perform the required gas and flow RATAs in essentially the same manner as for a load-based unit. The only difference is that in many sections of part 75 the term ''operating level'' would replace the term ''load'' or ''load level.'' Today's proposed rule would modify the text in several sections of part 75 (e.g., by adding a parenthetical expression such as ''(or normal operating level)'' after the term ''normal load''), to indicate that the provisions apply to both load-based and non-load-based units. The affected rule sections are: § 75.20(c)(2), sections 6.5.1, 6.5.2, 6.5.6.1(a), and 6.5.6.2(a) of appendix A, and sections 2.3.1.3, 2.3.2(d), 2.3.2(f), 2.4(b), and Figure 1 of appendix B.

G. Streamlining Changes

Background. There are a number of rule sections in part 75 that have expired, either on December 31, 1999, or on March 31, 2000. For some, but not all, of these expired rule provisions, part 75 contains new (replacement) provisions, having effective dates of January 1, 2000, or April 1, 2000, respectively. The expired provisions are a potential source of confusion to both the regulated community and to regulators in assessing compliance with part 75. For instance, the rule contains two sets of recordkeeping and reporting provisions, one of which expired on March 31, 2000, and the other which became effective on April 1, 2000. Removing the expired sections would greatly facilitate part 75 implementation and compliance.

EPA notes that the removal of expired provisions will not change the fact that those provisions were in effect up to their respective expiration dates. EPA intends to take appropriate enforcement action against violations of those provisions that occurred before the time of expiration.

Discussion of Proposed Changes. Today's proposed changes would streamline part 75 by eliminating outdated language in the rule and by removing a number of references throughout part 75 to sections of the rule that are no longer effective. This streamlining would occur in several places in the rule.

The May 26, 1999 revisions to part 75 became effective on June 25, 1999. However, the regulatory language in certain sections of the rule specified that compliance with those sections would not be required until a later date, April 1, 2000. The reason for the later effective date of certain provisions was to allow adequate time for development of the necessary reporting software associated with the rule changes. For instance, on May 26, 1999, revised recordkeeping and reporting sections were added to the rule as new §§ 75.57, 75.58, and 75.59, to replace the previous recordkeeping and reporting §§ 75.54, 75.55, and 75.56, as of April 1, 2000. However, due to the April 1, 2000 effective date of the new sections, the old sections could not be deleted from part 75, because this would have left a regulatory gap extending from June 25, 1999 (the effective date of the May 26, 1999 revisions) until April 1, 2000, during which there would have been no part 75 recordkeeping and reporting requirements in effect. So, the old sections were left in the rule and language was added to them to indicate that they were in effect only until April 1, 2000, and could no longer be used on and after that date.

Other rule sections with April 1, 2000 expiration dates and effective dates include the monitoring plan provisions (§ 75.53, paragraphs (e) and (f) replaced § 75.53, paragraphs (c) and (d) on April 1, 2000) and the CO_2 missing data provisions (§ 75.35, paragraphs (b) and (d) replaced § 75.35(c) on April 1, 2000). Today's proposal would remove from part 75 all of the rule sections that expired on April 1, 2000, and all textual references to those sections.

Rule sections that only applied to Phase I units and are now inapplicable and textual references to those sections would also be removed by today's proposal. For example, the 15 percent relative accuracy specification for flow monitors expired at the end of Phase I (on December 31, 1999) and was replaced on January 1, 2000, by the current 10 percent standard. Today's proposed rule would revise appendix A, section 3.3.4; appendix B, sections 2.3.1.2(b) and (c), and Figure 2 of appendix B, to reflect this.

EPA has prepared a technical support document (*see* Docket A–2000–33, Item II–A–2) that identifies in tabular form each of the streamlining revisions in the proposed revisions to part 75.

H. Monitoring Plan Information Submittal

1. What Changes Are Proposed in the Timeline for Monitoring Plan Updates?

Background. In several places part 75 requires the monitoring plan to be updated following a particular change or event (such as a span adjustment). For example, § 75.62(a)(2) requires submittal of updated hardcopy portions of the monitoring plan within 30 days of the event associated with a change. However, for events that require updating of the electronic monitoring plan, in many cases no similar deadline for submitting the changes is specified in part 75.

Discussion of Proposed Changes. Today's proposed rule would add parallel requirements to §§ 75.62(a)(1) and 75.73(e) for electronic monitoring plan updates. It would require the updated electronic monitoring plan to be submitted within 30 days of the event associated with a change, unless otherwise specified in part 75.

2. Is EPA Changing the Process for Electronic Submittal of Monitoring Plan Updates and Certification/Recertification Test Results?

Background. The current rule requires that you submit the complete, up-to-date electronic monitoring plan to EPA at least 45 days prior to initial certification, with each certification or recertification application, and in each quarterly report. The rule also requires an electronic version of the test results of all monitor certifications and recertifications to be submitted to EPA.

To best handle the data, EPA has decided to develop a consistent process for transmitting and receiving the information.

Discussion of Proposed Changes. Today's proposal would add language to §§ 75.62(a)(1), 75.63(c), and 75.73(e)(1), requiring monitoring plan updates and certification or recertification data to be submitted electronically by a method specified by EPA. The Agency's goal is to develop a process by which the required electronic monitoring plan information and test data could be submitted at any time and the database would be automatically updated. Until the final goal is achieved, EPA may use short-term, interim methods, such as email, to receive the information. The language in today's proposed rule, ''* * * by a method specified by the Administrator,'' is sufficiently general to allow the use of such interim methods until the goal is reached.

I. Appendix D—Miscellaneous Issues

Background. In addition to the revisions of the definitions of pipeline natural gas and natural gas described above in section C of this preamble, EPA believes that there are a number of other changes and clarifications that would improve implementation of the excepted method allowed under appendix D to part 75.

Discussion of Proposed Changes. The proposed rule would modify section 2.1.2 of appendix D, as follows. EPA proposes to relax the restriction in section 2.1.2 which prohibits units using the provisions of subpart H of part 75 to monitor and report NO_X mass emissions (i.e., units subject to a State or federal NO_X emission reduction program) from apportioning the measured hourly heat input at a common pipe to the individual units served by the pipe. For subpart H units, revised section 2.1.2 would conditionally allow apportionment of the common pipe heat input, provided that: (1) All of the units served by the common pipe are affected units; and (2) all of the units served by the pipe have similar efficiencies (i.e., they are all boilers or all combustion turbines). Section 2.1.2 would be further revised by removing the text from subsection 2.1.2.2 which describes a petition process for obtaining permission to apportion SO_2 emissions to the individual units served by a common pipe. This petition process is considered to be superfluous, because section 2.1.2 assumes that a certified appendix D fuel flowmeter has been installed on the common pipe. For SO_2 emissions accounting purposes, it is sufficient to report the combined SO_2 emissions for the units served by the common pipe, based on fuel flow rate measurements made at the pipe. Thus, revised section 2.1.2 would simply state that if you install a fuel flowmeter on a common pipe, you should report combined SO_2 emissions from the units served by the pipe and you should apportion the common pipe heat input to the individual units using the appropriate equation from appendix F to part 75 (e.g., Equation F–21a or F–21b).

The proposed rule would revise section 2.1.4.1 of appendix D to exempt oil-fired units that use a different grade of oil only for unit startup from using a certified fuel flowmeter. This exemption parallels the existing exemption for oil-fired units that use gas fuel only for unit startup.

The proposed rule would also revise section 2.1.4.3 of appendix D to clarify the reporting requirements when emergency fuel is burned. The owner or operator would have the option during emergency fuel combustion to either: (1) Use and report maximum potential values for heat input rate, fuel sulfur content, GCV, and density; or (2) to use measured values if a certified fuel flowmeter is installed for the emergency fuel and/or if fuel sampling and analysis of the fuel is performed.

For temperature transmitter calibrations, EPA would revise section 2.1.6.1(a) of appendix D to allow fixed reference points (such as the freezing point or boiling point of water) to be used for the zero and upscale calibrations.

For a subpart H unit for which you report data only during the ozone season and for which you use an orifice, nozzle, or venturi-type appendix D fuel flowmeter to determine heat input rate, the proposal would clarify that the owner or operator still would have to use all calendar quarters in the year to determine the deadline for the next visual inspection of the primary element (see § 75.74(c)(4)). This clarification is appropriate because the 12 calendar quarter time interval for conducting these visual inspections is not dependent on the reporting schedule.

For the optional fuel flow-to-load ratio test in section 2.1.7, minor errors in the instructions for common pipe and multiple pipe configurations would be corrected. Also, for the optional fuel flow-to-load ratio test, the proposal would allow data exclusions to be taken before analyzing the data. The current rule appears to require an initial data analysis with no exclusions, and allows the data exclusions to be claimed only when the first analysis results in a failed test. This was not the original intent when EPA adopted this provision.

For units using the fuel flow-to-load ratio test to extend the fuel flowmeter accuracy test deadline, the proposal would clarify the various reasons for which owners or operators could claim a one-quarter extension of the fuel flowmeter accuracy test deadline.

Today's proposal would clarify in Tables D–4, D–5, and elsewhere in the text that owners and operators could not continue to use an assumed sulfur content or GCV value, such as a contract specification or the maximum value from the previous year, if a sampled value exceeded the assumed value. In these circumstances the sampled value would become the new assumed value.

Guidelines would be added to section 2.3.2.1.2, explaining how to apply the results of periodic sulfur and GCV samples. Owners and operators would have to begin using the new values as of the date when the sample results were received (not retroactively to the date the sample was taken).

A clarification would be added that the demonstrations of sulfur content and GCV variability described in sections 2.3.5 and 2.3.6 are options, not requirements, for units that combust other gaseous fuels (fuels that do not qualify as either pipeline natural gas or natural gas) and choose not to perform daily GCV sampling and hourly fuel sulfur content sampling, respectively. Also, these sections would be revised to make clear that, as stated in sections 2.3.1.4 and 2.3.2.4, the 720-hour demonstration methodology may be used to demonstrate that a particular fuel meets the appropriate GCV and/or sulfur content requirements to qualify as pipeline natural gas or natural gas.

The missing data requirements for the sulfur content of gaseous fuels in Table D–6 would be changed. All of the missing data values would be based on the total sulfur content of the gas. For pipeline natural gas, a missing data value of 0.002 lb/mmBtu is proposed. For natural gas, the missing data value would be an emission rate (in lb/mmBtu) calculated from Equation D–1h, using the lesser of: (a) The maximum total sulfur content specified in the fuel contract; or (b) 1.5 times the highest total sulfur value from the previous year's samples. For gaseous fuels sampled daily, the substitute data value would be 1.5 times the highest total sulfur content obtained in the previous 30 daily samples. For gaseous fuels sampled hourly, the missing data value would be the highest total sulfur content from the previous 720 hourly samples. The reason for selecting the 0.002 lb/mmBtu value for pipeline natural gas (which exceeds the lb/mmBtu equivalent of the 0.5 gr/100 scf total

sulfur limit in the definition of pipeline natural gas) and for using the 1.5 multipliers is to ensure that the missing data values will be higher than the values normally used in the calculations from Table D–5.

Equations D–10 and D–11 would be removed from section 3.4.3(b). These equations are not needed because they are redundant with equations F–21a and F–21b in appendix F. A new equation, D–15a, which gives the unit heat input rate when multiple fuels are burned during the hour, would be added to section 3.5.4.

Sections 2.3.1.4(b) and 2.3.2.4(b) of appendix D would be revised to require initial and periodic sampling of pipeline natural gas and natural gas for documenting the total sulfur content of fuel. The proposed sampling frequency is semiannual and whenever ''it is reasonable to believe that the fuel composition has changed significantly.'' EPA solicits comment on the acceptability of this rather subjective ''reasonability'' criterion for determining when an additional sample is required. For compliance purposes, more precise language such as, ''Take an additional sample whenever there is any change to the contract or fuel supply to the unit, such that the latest sample is no longer representative of the fuel currently being combusted,'' may be more appropriate.

For fuels that qualify as pipeline natural gas, the 0.0006 lb/mmBtu default SO_2 emission rate would continue to be used. For natural gas, revised Equation D–1h would be used to calculate the SO_2 emission rate, based on the total sulfur content sampling results.

Two new sections, 2.3.1.4(c) and 2.3.2.4(c), would be added to appendix D, to state that if the results of periodic sampling show exceedances of the applicable total sulfur limits, the fuel would have to be reclassified.

Finally, as previously noted under section III.C.3 of this preamble, fuel flow rate missing data provisions for non-load-based units (such as cement kilns and process heaters) would be added to section 2.4 of appendix D. Guidelines for creating and using optional ''operational bins'' for determining appropriate fuel flow rate missing data values for non-load-based units would be added to appendix C of part 75, as new section 4.

J. Reporting and Recordkeeping

1. Will Certification and Recertification Test Notice Requirements Change?

Background. For initial certifications, the current rule requires at least 45 days notice before the first date of scheduled testing. For recertifications, 45 days of advance notice is required when all recertification tests are required (full recertification), but only 7 days notice is required when all of the tests are not required (partial recertification). This raises two questions: (1) Whether the notification requirements should be the same for both certifications and recertifications; and (2) how much advance notice is actually needed.

Discussion of Proposed Changes. The proposed rule changes would revise §§ 75.20 and 75.61 to make a single notification requirement of 21 days for initial certifications and for all recertifications, regardless of whether all of the tests are required. Based on the experience to date in implementing part 75, EPA believes the existing seven day notice provides too little time for State and local agency personnel and EPA personnel to schedule site visits to observe the recertification testing. Conversely, the Agency believes that 45 days notice is too far in advance, especially for recertifications. Test observation is a critical component of agency oversight of the Acid Rain Program monitoring requirements, and the 21 day test notification requirement would ensure that the agencies can successfully fulfill this responsibility.

2. Will EPA Continue to Accept Hardcopy Certification Statements?

Background. The current rule allows either electronic or hardcopy signatures and certification statements for quarterly report submittals. This creates unnecessary extra work for the EPA analysts who must document the receipt of all compliance certifications.

Discussion of Proposed Changes. Today's proposal would revise § 75.64(d) to eliminate the option to submit hardcopy compliance certifications and would, instead, require electronic submittal. Because of the electronic reporting requirements for all other quarterly report elements, all designated representatives will have the technical capability to submit electronic certifications. This rule change should therefore reduce the reporting burdens on both the regulated entities and EPA staff.

3. Will EPA Allow the Electronic Storage of Quality Assurance/Quality Control Plan Information?

Background. Section 1 of appendix B requires you to develop a quality assurance/quality control (QA/QC) program for all approved monitoring systems at a facility. The QA/QC program must include a written plan that provides detailed procedures and operations for certain activities, such as preventive maintenance and quality assurance test procedures. You must make this information and any ancillary supporting information from the monitor manufacturer (for example, maintenance manuals) available to auditors upon request. EPA has received a request from one utility to allow the QA/QC plan information to be stored electronically rather than in hardcopy.

Discussion of Proposed Changes. Today's proposal would revise appendix B, section 1, to allow QA/QC plan information to be stored electronically, provided that the information can be made available in hardcopy to inspectors or auditors upon request. Part 75 already allows electronic storage of hardcopy monitoring plan information, if the information can be furnished in hardcopy upon request during an audit (see § 75.53(e)). The proposed rule revision would use an approach for QA/QC plans that is consistent with this existing monitoring plan provision.

K. NO_X Monitoring in Multiple Stacks/Common Stacks

Background. For an exhaust configuration consisting of a main stack and a bypass stack, if the use of the bypass stack is limited by regulation or permit to emergency malfunctions of the flue gas desulfurization system, § 75.16 of the current rule allows the maximum potential SO_2 concentration to be reported during the malfunction in lieu of installing monitors on the bypass stack. For NO_X, however, the rule has no corresponding provision. Rather, it appears that monitoring of the bypass stack or monitoring of the duct(s) leading to the bypass stack are the only available options. Also, the current multiple stack and bypass stack provisions for NO_X (see §§ 75.17(c) and 75.72, paragraphs (c) and (d)) are not particularly clear or consistent.

Discussion of Proposed Changes. EPA would clarify and expand the instructions for SO_2 and NO_X monitoring in multiple and bypass stacks in §§ 75.16(c) and 75.17(c), and in § 75.72, paragraphs (c) and (d) in this proposal. EPA would also add a new provision to §§ 75.17(c) and 75.72(c), for configurations consisting of a main stack and a bypass stack, that allows the maximum potential NO_X emission rate to be reported when the bypass stack is used. Instructions would also be provided for reporting other parameters (i.e., SO_2, CO_2, flow rate, moisture, heat input rate) during hours when the bypass stack is used.

Today's proposed rule would revise the language in § 75.16(c)(3) which

restricts the reporting of the maximum potential SO_2 concentration (MPC) to emergency situations in which the flue gas desulfurization (FGD) system is bypassed. Today's rule would allow the MPC to be reported in lieu of monitoring at the bypass stack, provided that the use of the bypass stack is limited to unit startups, emergency situations, and routine maintenance of the FGD system and the main stack. Instructions would also be provided for reporting other parameters (i.e., NO_X , CO_2, flow rate, moisture, heat input rate) during hours when the bypass stack is used.

L. Appendix E Issues

1. How Will the Proposed Rule Affect Appendix E Test Notifications and Submittal of Hardcopy Recertification Test Results?

Background. For routine appendix E retests and recertification testing, the rule is currently unclear regarding the test notification requirements and submittal of the hardcopy test results.

Discussion of Proposed Changes. The proposal would add a requirement to § 75.61(a)(5) to provide notice of routine appendix E retesting at least 21 days prior to the start of the testing. It would also add a requirement to § 75.61(a)(1)(ii) to provide notice of appendix E recertification testing. Finally, the proposed rule would add a requirement to §§ 75.60(b) and 75.73(d) to submit the results of routine appendix E retest results in hardcopy to the appropriate Region and State, upon request. This is exactly analogous to the requirement in §§ 75.60(b)(6) and 75.73(d)(4) to provide hardcopy RATA results.

2. Will the Frequency of Retesting of Appendix E Units Be Changed?

Background. Section 2.2 of appendix E requires periodic retesting for quality assurance purposes. The timeline for retesting is every 3,000 operating hours or the five year anniversary of the operating permit, whichever is sooner. These requirements are difficult to implement and to track. The permit anniversary date is not a good reference point. Also, the rule does not indicate whether the 3,000 operating hours are fuel-specific.

Discussion of Proposed Changes. Today's proposal would revise appendix E, section 2.2, to require retesting for all fuels, once every 20 calendar quarters. The quarter of the last test would serve as the reference point, similar to the methodology used for setting RATA and fuel flowmeter accuracy test deadlines. Fuel-specific missing data procedures would be used when a retest is not completed by the deadline. For each fuel, the new correlation curve obtained in a retest would be used for reporting, beginning with the first operating hour in which the fuel is combusted after completion of the retest. This is analogous to the part 75 requirement to apply CEMS bias adjustment factors beginning with the first operating hour after completion of a RATA.

3. How Will the Timeline for Unscheduled Appendix E Retests Be Revised?

Background. Section 2.3 of appendix E requires retesting within 10 unit operating days or 180 calendar days (whichever occurs first) whenever the monitored operating parameters are exceeded for more than 16 consecutive hours or the data availability, since the last test, is less than 90 percent. For many units, 10 operating days is not a sufficient amount of time to schedule a retest and perform the testing.

Discussion of Proposed Changes. EPA proposes to revise appendix E, section 2.3, to change the 10 unit operating day requirement to 30 unit operating days. This change would provide sufficient time to schedule and perform the tests and to meet the applicable test notification requirements.

4. How Will Appendix E Missing Data Procedures Be Changed?

Background. For missing data purposes, appendix E prescribes that the highest NO_X emission rate from the most recent set of baseline correlation tests be reported for each hour of the missing data period. There are three situations for which this missing data scheme may be inappropriate: (1) When the measured hourly heat input rate is higher than the highest heat input rate from the baseline correlation tests; (2) for a unit with add-on NO_X controls, if the controls are not in operation or it is not possible to document that the controls are operating properly; and (3) when emergency fuel is combusted.

Discussion of Proposed Changes. To address the concerns about situations in which the current missing data procedures may be inappropriate, the proposed rule would add to section 2.5 of appendix E a requirement to calculate a fuel-specific maximum potential NO_X emission rate (MER) for each type of fuel combusted by the unit and would add three new sections, 2.5.2.1, 2.5.2.2, and 2.5.2.3, to require reporting of the fuel-specific NO_X MER for cases (2), and (3), described above. For fuel mixtures, EPA would require substitution of the highest MER value for the fuels in the mixture.

For case (1) described above, two reporting options would be allowed. Whenever the heat input rate for a given unit operating hour exceeds the highest heat input rate from the baseline correlation tests, the owner or operator could either: (a) Report the hourly NO_X emission rate as the higher of the linear extrapolation of the correlation curve or the fuel-specific MER; or (b) report 1.25 times the highest NO_X emission rate on the correlation curve, not to exceed the fuel-specific MER. Note that for units with NO_X emission controls, the use of an extrapolated NO_X emission rate under (a), above, and the use of 1.25 times the highest value on the correlation curve under (b), above, would be disallowed, and the MER would have to be reported for any hour in which the emission controls could not be documented to be in proper operation.

5. How Will the Appendix E Testing Requirements for Emergency Fuel Be Changed?

Background. The current rule allows the designated representative for an appendix E unit to petition the Administrator for an exemption from appendix E testing for emergency fuel. Many Phase II Acid Rain units submitted such petitions with their initial certification applications, and the petitions were approved.

Discussion of Proposed Changes. Today's proposed rule would revise section 2.1.4 of appendix E to remove the requirement to petition the Administrator to obtain an exemption from appendix E testing for emergency fuel. EPA believes that the petition process is unnecessary, provided that the unit has a federally enforceable permit which restricts the combustion of a particular fuel to emergency situations. Therefore, the proposed rule would exempt emergency fuel from appendix E testing if the unit has the necessary permit and if documentation is provided in the monitoring plan for the unit.

M. Reference Methods

1. Which Code of Federal Regulations Versions of Reference Methods Are To Be Used?

Background. In the May 26, 1999 revisions to part 75, EPA specified that only particular versions of Reference Methods 6C, 7E, and 3A (the methods used for gas RATAs) be used. Those versions are the 1995, 1996, and 1997 Code of Federal Regulations versions of the methods. This provision was added

to the rule because EPA at that time had proposed substantive revisions to these methods for the New Source Performance Standards (NSPS) Program that were not appropriate for the Acid Rain Program. However, the revisions to the reference methods were never finalized, therefore the reference to particular versions is no longer needed. Removing the caveat will eliminate confusion because these reference methods have been basically the same in all versions of the Code of Federal Regulations, from 1988 through 1999.

Discussion of Proposed Changes. Today's proposal would revise § 75.22(a) and appendix A, section 6.5.6, to remove from the rule all references to the 1995, 1996, and 1997 Code of Federal Regulations versions of Reference Methods 6C, 7E, and 3A.

2. Are There Other Changes to Reference Methods?

Background. Three issues have arisen regarding the part 60 reference test methods used to certify and quality assure part 75 CEMS. First, when measurement of the stack gas moisture content is required to determine the stack gas molecular weight, § 75.22(a)(4) allows the source to use any of the alternative moisture techniques listed in section 1.2 of Method 4. This includes, among other things, ''previous experience.'' Second, when an automated version of Method 2 is used for flow RATA testing, often all four available sample ports are occupied simultaneously with velocity probes which are bolted in place. This can make it difficult to obtain a moisture sample once every three runs or once every clock hour, as required in section 6.5.7 of appendix A. Third, questions have arisen regarding the manner in which NO_X compliance tests and RATAs are performed for combustion turbines.

Discussion of Proposed Changes. Today's proposed rule would revise § 75.22(a)(4), to clarify that for purposes of determining the stack gas molecular weight during a part 75 flow RATA, the only acceptable alternative moisture methodology listed in section 1.2 of Method 4 is the wet bulb-dry bulb measurement technique. The other methodologies listed (''drying tubes,'' ''condensation techniques,'' ''stoichiometric calculations,'' and ''previous experience'') are not defined precisely enough to approve their use. In contrast, the wet bulb-dry bulb technique is well-established and is generally familiar to emission testers.

Today's proposal would also revise section 6.5.7 of appendix A to allow, for purposes of determining stack gas molecular weight during part 75 flow RATAs, moisture measurements to be made before and after a series of RATA runs at a particular load level (low, mid, or high), in lieu of measuring moisture every three runs or once every clock hour, as required by the current rule. The results of the before and after moisture measurements would be averaged arithmetically, and the average value would be applied to all RATA runs in the series. Note, however, that this moisture measurement option could only be used if the before and after runs were performed no more than three hours apart. Section 6.5.7 would be further revised by clarifying that sufficient measurement time must be allowed at each traverse point of a flow RATA to ensure that stable temperature readings are obtained, particularly for the first point at which data are taken after a probe is moved from one port to the next.

Finally, today's proposed rule would revise § 75.22 and section 6.5.10 of appendix A, to allow the use of EPA Method 20, as an alternative to Method 7E, for relative accuracy test audits (RATAs) of NO_X monitoring systems installed on combustion turbines. Further, the proposed rule would revise section 6.5.6(b) of appendix A, to allow the reference method measurement points specified in section 6.1.2 of Method 20 to be used for a Method 7E RATA of a NO_X monitoring system installed on a combustion turbine. EPA believes these added flexibilities will simplify certification and quality assurance testing for combustion turbines. The rationale for these two new provisions follows.

Many utilities are constructing new gas turbines. Almost invariably, NO_X monitoring systems will be installed on these units. EPA Method 20 is the NO_X compliance test method for new gas turbines, under subpart GG of 40 CFR part 60, the New Source Performance Standards (NSPS) for stationary sources. Method 7E is the method currently prescribed by part 75 as the reference method for NO_X RATAs. Today's proposed rule would allow Method 20 data to be used for a dual purpose, that is, as compliance test data for NSPS and as reference method test data for the RATA of the part 75 NO_X monitoring system. This would make a second reference method test using Method 7E unnecessary.

EPA believes that for a Method 7E RATA of a NO_X monitoring system installed on a combustion turbine, allowing the Method 20 sample points to be used as the reference method measurement points is potentially beneficial, particularly if the stack or duct being tested is rectangular. The provisions in section 3.2 of Performance Specification No. 2 (PS No. 2) in appendix B of 40 CFR part 60 specify the required reference method measurement points for gas monitor RATAs. However, section 3.2 of PS No. 2 only addresses the point layout for circular stacks. There are no clear guidelines for rectangular stacks or ducts. On the other hand, section 6.1.2 of Method 20 does have a procedure for selecting reference method measurement points which applies to both circular and rectangular stacks or ducts.

N. Appendix G Revisions

Background and Discussion of Proposed Changes. Today's proposed rule would revise section 2.3 of appendix G to expand the applicability of Equation G–4 to oil-fired units. Currently, section 2.3 restricts the use of Equation G–4 to gas-fired units (as defined in § 72.2). There is no technical reason to prohibit the use of this equation by oil-fired units. Many gas-fired units that currently use Equation G–4 occasionally combust fuel oil. During the oil-burning hours, Equation G–4 is still used to report CO_2 emissions, except that an F_C factor of 1,420 scf/mmBtu (for oil) instead of the usual F_C factor of 1,040 scf/mmBtu for natural gas is used. Allowing the use of Equation G–4 for oil-fired units would enable the owner or operator to report hourly CO_2 emissions in tons per hour, instead of using Equation G–1, which requires CO_2 reporting on a tons per day basis. This option would not only simplify emission reporting for oil-fired units but would enable EPA to perform meaningful electronic audits of the reported CO_2 emissions, as the hourly heat input (i.e., the term ''H'' in Equation G–4) is the only variable in Equation G–4 and is required to be reported each hour in the EDR. However, the cumbersome term W_C (i.e., lbs of carbon burned per day) in Equation G–1 is not reported anywhere in the EDR.

O. Technical Changes and Corrections

Background. An important objective of this proposed rulemaking is to make technical changes and corrections to part 75. These changes and corrections are necessary to eliminate printing, typographical, and grammatical errors, to correct or clarify cross references, and, in a few instances, to ensure that the specific rule language is consistent with the Agency's intent. None of these technical corrections and changes adds new requirements or substantively

affects the obligations of the entities that must comply with part 75 requirements.

The technical changes and corrections fall into several categories. In the first category are efforts to rewrite rule provisions to increase clarity and to accord with other provisions of part 75. In the second category are corrections and clarifications of equations, including the definitions of certain variables. The final category of technical changes consists of corrections of printing, typographical, and grammatical errors. Included in this category are repetitive words and phrases, misspelled words, and misplaced punctuation.

Discussion of Proposed Changes. The technical support document (Docket A–2000–33, Item II–A–2) provides a specific description for each of these technical changes and corrections.

P. What Other Changes is EPA Proposing to the Federal NO_X Budget Trading Program Today?

Background and Discussion of Proposed Changes. We are proposing a number of minor changes to the Federal NO_X Budget Trading Program in part 97 to correct errors or clarify provisions. For example, one proposed change is to correct the definition of ''percent monitor data availability'' in § 97.2. This definition is used to allow units to qualify for early reduction credits in § 97.43(a)(1) or to qualify to use data as a baseline for allowance allocations for opt-in units under § 97.84(b). EPA intended to make this definition consistent with the term's use in the part 75 monitoring rule, except that ''percent monitor data availability'' would apply only for an ozone season instead of for a year's worth of data on a rolling basis. Some companies have pointed out that the current definition is inconsistent because hours when the unit does not operate are still used in the calculation. This means that a unit might not be able to meet the required 90 percent monitor data availability simply because the unit does not operate for many hours during the ozone season. EPA is proposing to revise the definition so that it refers to the percentage of unit operating hours with valid, quality-assured data during an ozone season, rather than the percentage of all 3,672 hours during an ozone season.

As a further example of changes to part 97, the definition of '' NO_X allowance'' in § 97.2 provides that the term includes NO_X allowances from an approved State NO_X Budget Trading Program, except for purposes of certain listed sections relating to allocations. Section 97.40, defining the trading program budget, is added to that list of sections. In addition, EPA is correcting the reference in § 97.42(e)(2) to allowances ''deducted under paragraph (c)(1) of this section'' to refer instead to ''paragraph (e)(1) of this section.'' Other proposed changes to part 97 are addressed in a technical support document (Technical Support Document, Docket A–2000–33, Item II–A–2). EPA believes these minor changes may reduce confusion and improve consistency within part 97.

Finally, EPA is proposing a number of other minor changes to part 78 to make existing administrative appeal procedures applicable to decisions of the Administrator under part 97. The changes to part 78 are addressed in a technical support document (Technical Support Document, Docket A–2000–33, Item II–A–2).

IV. Administrative Requirements

A. Public Hearing

If requested as specified in the **DATES** section of this document, a public hearing will be held to discuss the proposed regulations. Persons wishing to make oral presentations at the public hearing should contact EPA at the address given in the **ADDRESSES** section of this document. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days of the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this document.

A verbatim transcript of the public hearing, if held, and all written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see the **ADDRESSES** section of this document).

B. Public Docket

The Docket for this regulatory action is A–2000–33. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This proposed rule is not expected to have an annual effect on the economy of $100 million or more. However, pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a significant action because it raises novel policy issues. As such, the proposed rule has been submitted for OMB review. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section

205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule is not expected to result in expenditures of more than $100 million in any one year and, as such, is not subject to section 202 of the UMRA. EPA will continue to use its outreach efforts related to part 75 implementation, including a policy manual that is updated regularly, to inform, educate, and advise all potentially impacted small governments about compliance with part 75.

E. Paperwork Reduction Act

The information collection requirements in 40 CFR parts 72, 75, 78 and 97 affect two EPA programs, the Acid Rain Program and the Federal NO_X Budget Trading Program. There are two program ICRs currently in place that account for the basic recordkeeping and reporting burdens associated with 40 CFR parts 72, 75, 78 and 97. First, the Acid Rain Program ICR1633.12, (OMB No. 2060–0258) addresses the costs for units affected by the Acid Rain Program. The NO_X SIP Call ICR1857.02, (OMB No. 2060–0445) addresses the costs, including NO_X mass monitoring costs, by both Acid Rain Program (ARP) units and non-ARP units in the NO_X Budget Trading Program.

Most of the changes associated with this rulemaking are aimed at fine tuning the regulations in response to issues raised during the ongoing implementation of part 75. Thus, they do not significantly affect the burden estimates included in the two existing ICRs. Table 1, below, categorizes the proposed changes to parts 72 and 75, and proposed associated changes to part 97, as recordkeeping and reporting burden/cost neutral or as burden/cost reducing; none of the changes is expected to significantly increase burdens or costs. (The remaining changes to parts 72, 78, and 97 do not affect recordkeeping and reporting requirements.)

Further, the Agency expects the changes to have minimal impact on existing program ICRs because many of the changes merely serve to make additional flexibilities feasible. For example, many of the proposed rule revisions to the LME section will clarify how the rule applies to non-ARP SIP Call units that use part 75 for NO_X mass monitoring. The existing rule language is unclear for these non-ARP units. The changes make use of the LME provisions feasible for non-ARP units so that the scope of applicability to non-ARP units is not expected to be significantly different than that for ARP units.

The SIP Call ICR assumed none of the non-ARP units would take advantage of the reduced burdens and costs associated with the LME provisions because those estimates only related to burden incurred through the year 2002. In future years, as LMEs avail themselves of the proposed provisions, it is estimated that there will be burden reductions. These reductions will be reflected in the next revisions to the SIP Call ICR.

Table 1—Summary of Impacts of Major Rule Revisions

A. Rule Revisions Assumed To Be Cost/Burden Neutral
- Pipeline natural gas definition revision, and other definition clarifications
- Standardization of deadlines for various activities/reports/notices
- Data validation clarifications
- Span/range clarifications
- Bypass monitoring flexibility changes
- Clarifications for Subpart H missing data
- General LME clarifications
- Missing data options relating to fuel type, degree of control, and non-load based units
- Alternative bypass stack monitoring options
- Other miscellaneous changes

B. Rule Revisions Assumed To Decrease Costs/Burdens
- Expanded clarification of LME for Subpart H monitoring

Although not indicated in Table 1, there are two primary ways in which the proposed parts 72, 75 and 97 revisions could result in some increased burden or cost. First, the regulated industry and State and local agencies involved with part 75 monitoring will have to review the revised regulation to understand the changes. The existing ARP and SIP Call ICRs have accounted for this increase in a line item for ongoing rule review. Nevertheless, it is important to note that new units just initiating part 75 monitoring in response to the NO_X SIP Call will experience less burden as a consequence of the numerous clarifications, the specific changes to address NO_X mass monitoring issues, and the removal of outdated sections. Taken as a whole, EPA does not believe that the regulatory review burdens will be affected significantly.

The second type of burden or cost increase would be associated with any required data acquisition and handling system (DAHS) software changes that may be necessary to the extent the rule revisions affect recording and reporting data in the required electronic data formats. Generally, EPA has attempted to minimize any DAHS impacts associated with these revisions. There are some optional elements of the proposed revisions that would require DAHS software changes, but only if the owner or operator decides to take advantage of the option for its circumstances. EPA believes many sources will only avail themselves of these types of changes as part of other routine monitoring system component upgrades. Consequently, the expected impact in this area is also expected to be minimal. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a 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 Agency requests comment on its assessment of information burden imposed by these requirements. An ICR amendment was not prepared because the changes were anticipated to be minimal in the context of the two existing ICRs. Send comments on the ICRs to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR in any correspondence. Additional information in support of the Agency's estimate is contained in the docket for this proposed rulemaking.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small

entities. Small entities include small businesses, small not-for-profit enterprises, and governmental jurisdictions.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed action. For the Acid Rain Program, these proposed revisions would not result in increased impacts to small entities.

For these reasons, I certify that today's proposed rule would not have a significant, economic impact on a substantial number of small entities.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA invites public comment on the voluntary consensus standards which are proposed to be incorporated by reference for use in part 75. EPA has not identified any additional voluntary consensus standards which might be applicable to this rulemaking. This does not indicate that other applicable standards do not exist or that any other standards should not be allowed. Therefore, EPA also invites public comment on any other voluntary consensus standards which may be appropriate for the proposed regulatory action. Further, if additional applicable voluntary consensus standards are identified in the future, the designated representative may petition under § 75.66(c) to use an alternative to any standard incorporated by reference and prescribed in this part.

H. 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.

I. Executive Order 12898

Executive Order 12898 requires that each federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The technical revisions in this proposed rule to various monitoring and other requirements would have no impact on emission levels or the location of emission reductions. Thus, the proposed rule revisions would not have a disproportionately high and adverse impact on minorities or low-income populations.

J. 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 the Agency determines (1) is ''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.

Today's proposed rule is not subject to Executive Order 13045 because it is not expected to have an annual effect on the economy of $100 million or more. Further, EPA does not have reason to believe that the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

K. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of 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.

The rule revisions in this proposed action 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. This proposed action does not create a mandate upon State, local, or tribal governments, except to the extent such governments own or operate an affected source. Even in those cases, the proposed rule revisions do not have federalism implications and do not impose significant compliance costs beyond the costs already incurred under part 75.

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.

List of Subjects

40 CFR Part 72

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric utilities, Nitrogen oxides, Reporting and

recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric utilities, NO_X Budget Program, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 72—PERMITS REGULATION

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by:

a. Revising the definitions of ''Cogeneration unit'', ''Continuous emission monitoring system or CEMS'', ''Hour before and after'', ''Maximum potential NO_X emission rate'', ''Missing data period'', ''Monitor accuracy'', ''Pipeline natural gas'', ''Stack operating hour'', and ''Unit operating hour'';

b. In the definition of ''Automated data acquisition and handling system'' by adding the words ''moisture monitors,'' before the word ''opacity'';

c. In the definition of ''By-pass stack'' by removing the hyphen from the word ''bypass'';

d. In paragraph (1) of the definition of ''Calibration error'' by adding the word ''a'' before the words ''gaseous monitor'';

e. In the definition of ''Compliance plan'' by adding a closing parenthesis after the second instance of the words ''part 76 of this chapter'';

f. In the definition of ''Continuous opacity monitoring system or COMS'' by revising the words ''systems are component parts'' in the second sentence to read ''components are'', and in paragraph (2) by revising the word ''A'' to read ''An automated'';

g. Revising paragraph (2) of the definition of ''Emergency fuel'';

h. In the definition of ''Fuel flowmeter QA operating quarter'' by adding the word ''cumulative'' after the words ''at least 168'' and removing the words ''or more'' at the end of the definition;

i. Remove the definition of ''Heat input'' and add in its place a new definition ''*Heat input rate*'';

j. Remove the definition of ''Maximum rated hourly heat input'' and add in its place the definition for ''*Maximum rated hourly heat input rate*'';

k. In the definition of ''Natural gas'' by revising the second sentence and by removing the word ''meet'', and replacing the ''%'' symbol with the word ''percent'' in the third sentence;

l. In the definition of ''QA operating quarter'' by adding the word ''cumulative'' after each occurrence of the words ''at least 168'';

m. In the definition of ''Relative accuracy'' by adding the words ''or moisture'' after the words ''between the pollutant'' and by adding the words ''or moisture monitor'' after the words ''flow monitor'';

n. Adding in alphabetical order new definitions for ''Common pipe'', ''Common pipe operating time'', ''Cumulative stack operating hours'', ''Cumulative unit operating hours'', ''Diluent cap value'', ''Fuel flowmeter system'', ''Fuel usage time'', ''Multiple stack configuration'', ''Stack operating time'', and ''Unit operating time''.

The revisions and additions read as follows:

§ 72.2 Definitions.

* * * * *

Cogeneration unit means a unit that produces electric energy and useful thermal energy for industrial, commercial, or heating or cooling purposes, through the sequential use of the original fuel energy.

* * * * *

Common pipe means an oil or gas supply line through which the same type of fuel is distributed to two or more affected units.

Common pipe operating time means the portion of a clock hour during which fuel flows through a common pipe. The common pipe operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Continuous emission monitoring system or CEMS means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, or CO_2 emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18 and § 75.71(a) of this chapter indicate which type(s) of CEMS is required for specific applications:

(1) A sulfur dioxide monitoring system, consisting of an SO_2 pollutant concentration monitor and an automated DAHS. An SO_2 monitoring system provides a permanent, continuous record of SO_2 emissions in units of parts per million (ppm);

(2) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(3) A nitrogen oxides (NO_X) emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. A NO_X-diluent monitoring system provides a permanent, continuous record of: NO_X concentration in units of parts per million (ppm), diluent gas concentration in units of percent O_2 or CO_2 (percent O_2 or CO_2), and NO_X emission rate in units of pounds per million British thermal units (lb/mmBtu);

(4) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated DAHS. A NO_X concentration monitoring system provides a permanent, continuous record of NO_X emissions in units of parts per million (ppm). This type of CEMS is used only in conjunction with a flow monitoring system to determine NO_X mass emissions (in lb/hr) under subpart H of part 75 of this chapter;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO_2 emissions in units of percent CO_2 (percent CO_2); and

(6) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides

a permanent, continuous record of the stack gas moisture content, in units of percent H_2O (percent H_2O).

* * * * *

Cumulative stack operating hours means the sum of the stack operating times (as defined in this section) for a series of consecutive stack operating hours (as defined in this section), rounded to the nearest hour.

Cumulative unit operating hours means the sum of the unit operating times (as defined in this section) for a series of consecutive unit operating hours (as defined in this section), rounded to the nearest hour.

* * * * *

Diluent cap value means a default CO_2 or O_2 concentration which may be used to calculate the hourly NO_X emission rate, CO_2 mass emission rate, or heat input rate, when the measured hourly average CO_2 or O_2 concentration is below the default value. The diluent cap values for boilers are 5 percent CO_2 and 14 percent O_2. For combustion turbines, the diluent cap values are 1 percent CO_2 and 19 percent O_2.

* * * * *

Emergency fuel means:

* * * * *

(2) For purposes of the requirement for stack testing for an excepted monitoring system under appendix E of part 75 of this chapter, the fuel identified in a federally-enforceable permit for a plant and identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available.

* * * * *

Fuel flowmeter system means an excepted monitoring system (as defined in this section) which provides a continuous record of the flow rate of fuel oil or gaseous fuel, in accordance with appendix D to part 75 of this chapter. A fuel flowmeter system consists of one or more fuel flowmeter components, all necessary auxiliary components (e.g., transmitters, transducers, etc.), and a data acquisition and handling system (DAHS).

* * * * *

Fuel usage time means the portion of a clock hour during which a unit combusts a particular type of fuel. The fuel usage time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Heat input rate means the product (expressed in mmBtu/hr) of the gross calorific value of the fuel (expressed in mmBtu/mass of fuel) and the fuel feed rate into the combustion device (expressed in mass of fuel/hr) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Hour before and *hour after* means, for purposes of the missing data substitution procedures of part 75 of this chapter, the quality-assured hourly SO_2 or CO_2 concentration, hourly flow rate, hourly NO_X concentration, hourly moisture, hourly O_2 concentration, or hourly NO_X emission rate (as applicable) recorded by a certified monitor during the unit or stack operating hour immediately before and the unit or stack operating hour immediately after a missing data period.

* * * * *

Maximum potential NO_X emission rate, or *MER* means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F to part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2.1.2.1 of appendix A to part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2) under all operating conditions of the unit except for unit start-up, shutdown, and upsets. The diluent cap value, as defined in this section, may be used in lieu of the maximum O_2 or minimum CO_2 concentration to calculate the MER.

Maximum rated hourly heat input rate means a unit-specific maximum hourly heat input rate (mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input rate or the highest observed hourly heat input rate.

Missing data period means the total number of consecutive hours during which any certified CEMS or approved alternative monitoring system is not providing quality-assured data, regardless of the reason.

Monitor accuracy means the closeness of the measurement made by a CEMS to the reference value of the emissions or volumetric flow being measured, expressed as the difference between the measurement and the reference value.

* * * * *

Multiple stack configuration refers to an exhaust configuration in which the flue gases from a particular unit discharge to the atmosphere through two or more stacks. The term also refers to a unit for which emissions are monitored in two or more ducts leading to the exhaust stack, in lieu of monitoring at the stack.

* * * * *

Natural gas * * * Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet.

* * *

* * * * *

Pipeline natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions, and which is provided by a supplier through a pipeline. Pipeline natural gas contains 0.5 grains or less of total sulfur per 100 standard cubic feet. Additionally, pipeline natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot.

* * * * *

Stack operating hour means a clock hour during which flue gases flow through a particular stack or duct (either for the entire hour or for part of the hour) while the associated unit(s) are combusting fuel.

Stack operating time means the portion of a clock hour during which flue gases flow through a particular stack or duct while the associated unit(s) are combusting fuel. The stack operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Unit operating hour means a clock hour during which a unit combusts any fuel, either for part of the hour or for the entire hour.

* * * * *

Unit operating time means the portion of a clock hour during which a unit combusts any fuel. The unit operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

3. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651k.

§ 75.1 [Amended].

4. Section 75.1 is amended by adding the words ''(the Act)'' at the end of the first sentence of paragraph (a).

5. Section 75.4 is amended by:

a. In paragraph (b) introductory text by adding the word ''moisture,'' after the word ''opacity,'';

b. In paragraphs (b)(2) and (c)(2) by revising the words ''Not later than 90''

to read ''The earlier of 90 unit operating days or 180 calendar'';

c. Remove ''or'' at the end of paragraphs (b)(1) and (c)(1) and remove the period at the end of paragraphs (b)(2) and (c)(2) and add ''; or'' in its place;

d. Adding paragraphs (b)(3) and (c)(3);

e. In the first sentence of paragraph (d) by revising the words ''the earlier of 45'' to read ''90'', adding the words ''(whichever occurs first)'' following the words ''180 calendar days'', and removing the words ''of the affected unit'' after the words ''recommences commercial operation'';

f. In the first sentence of paragraph (e) introductory text by revising the words ''90 calendar days'' to read ''90 unit operating days or 180 calendar days (whichever occurs first)'';

g. Revising paragraphs (f) introductory text and (f)(1);

h. Removing and reserving paragraphs (g) and (h); and

i. In paragraph (i) by removing the word ''or'' in paragraph (i)(1) and by revising paragraphs (i)(2) and (i)(3).

The revisions and additions read as follows:

§ 75.4 Compliance dates.

* * * * *

(b) * * *

(3) The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after the applicable compliance date in this paragraph until all required certification tests are successfully completed using either:

(i) The maximum potential concentration of SO_2, the maximum potential NO_X emission rate, as defined in section 2.1.2.1 of appendix A to this part, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part;

(ii) Reference methods under § 75.22(b); or

(iii) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

(c) * * *

(3) The owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow data for all unit operating hours after the applicable compliance date in this paragraph until all required certification tests are successfully completed using either:

(i) The maximum potential concentration of SO_2, the maximum potential NO_X emission rate, as defined in section 2.1.2.1 of appendix A to this part, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part;

(ii) Reference methods under § 75.22(b); or

(iii) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

* * * * *

(f) In accordance with § 75.20, the owner or operator of an affected gas-fired or oil-fired peaking unit, if planning to use appendix E of this part, shall ensure that the required certification tests for excepted monitoring systems under appendix E are completed for backup fuel, as defined in § 72.2 of this chapter, no later than 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit first combusts the backup fuel following the certification testing with the primary fuel. Until all required certification tests are successfully completed, the owner or operator shall report NO_X emission rate data for all unit operating hours that the backup fuel is combusted using either:

(1) The fuel-specific maximum potential NO_X emission rate;

* * * * *

(i) * * *

(2) For a new affected unit which has not commenced commercial operation by January 2, 2000, 90 unit operating days or 180 calendar days (whichever occurs first) after the date the unit commences commercial operation; or

(3) For an existing unit that is shutdown and is not yet operating by April 1, 2000, 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit recommences commercial operation.

§ 75.6 [Amended].

6. In § 75.6 amend paragraphs (a)(19), (a)(26), and (a)(35) by removing the words ''§ 75.15 and''.

7. Section 75.10 is amended by:

a. In paragraph (a)(1) by revising the word ''The'' in the first sentence to read ''To determine SO_2 emissions, the'', and by revising the words ''the automated'' to read ''an automated'';

b. In paragraph (a)(2) by revising the word ''The'' in the first sentence to read ''To determine NO_X emissions, the''; by revising the words ''the automated'' to read ''an automated''; and by revising the first occurrence of the word '' NO_X'' in the first sentence to read '' NO_X-diluent'';

c. In paragraph (a)(3)(i) by revising the words ''the automated'' to read ''an automated'';

d. In paragraph (a)(3)(iii) by revising the words ''using an O_2 concentration monitor in order'' to read ''that uses an O_2 concentration monitor'' and by revising the words ''using the procedures in appendix F of this part with the automated'' to read ''(according to the procedures in appendix F of this part) with an automated'';

e. Removing ''and'' at the end of paragraph (a)(3) and removing the period at the end of paragraph (a)(4) and adding ''; and'' in its place;

f. Adding new paragraph (a)(5);

g. In paragraph (c) by adding the word ''Rate'' after the words ''Heat Input'' in the heading and by adding the words ''rate, in units of mmBtu/hr,'' after the words ''record the heat input'';

h. In paragraph (d)(1) by removing the words ''and component thereof'' from the first sentence, removing the words ''SO_2 emission rate in lb/mmBtu (if applicable),'' from the second sentence, and by adding the word ''or'' after the words ''of this part,'' in the fourth sentence;

i. In paragraph (d)(3) by revising the words ''flow monitor, or NO_X'' to read '' NO_X concentration monitor, flow monitor, moisture monitor, or NO_X-diluent'', by revising the words ''An hourly average NO_X or SO_2'' in the second sentence to read ''For a NO_X-diluent monitoring system, hourly average NO_X'', by adding the word ''NO_X'' before the word ''pollutant'' and by removing the words ''(NO_X or SO_2)'' in the second sentence; and by revising in the fourth sentence the words ''Except for SO_2 emission rate data in lb/mmBtu, if'' to read ''If'';

j. In paragraph (f) by removing the words ''and component thereof''; and

k. Revising the capitalization in the title of paragraph (g) from ''Minimum Recording and Recordkeeping Requirements'' to ''Minimum recording and recordkeeping requirements''.

The revisions and additions read as follows:

§ 75.10 General operating requirements.

(a) * * *

(5) A single, certified flow monitoring system may be used to meet the requirements of paragraphs (a)(1) and (a)(3) of this section. A single certified diluent monitor may be used to meet the requirements of paragraphs (a)(2) and (a)(3) of this section. A single automated data acquisition and handling system may be used to meet the requirements of paragraphs (a)(1) through (a)(4) of this section.

* * * * *

§ 75.11 [Amended].

8. Section 75.11 is amended by:

a. Revising the word ''psychometric'' in paragraph (b)(2) to read ''psychrometric'';

b. In the second sentence of paragraph (e)(1) by adding the words ''(according to the applicable equation in section 5.2 of appendix F to this part)'' after the word ''monitor'', and removing the words ''and equation D–5 in appendix D to this part'';

c. In paragraph (e)(2) by revising in the first sentence the words ''§ 75.55 or § 75.58, as applicable,'' to read ''§ 75.58,'', and by, in the second sentence, adding the word ''rate'' after ''heat input'' and revising the words ''§ 75.54(b)(5) or § 75.57(b)(5), as applicable,'' to read ''§ 75.57(b)(5)'';

d. In paragraph (e)(3) by removing the third sentence, removing the period at the end of the second sentence and adding a semicolon, removing the words ''then on and after April 1, 2000,'' in the second sentence, and by revising the words ''be subject to'' to read ''meet'' in the second sentence; and

e. In the first sentence of paragraph (e)(3)(iii) by adding the words ''bias-adjusted'' before the words ''hourly average''.

9. Section 75.12 is amended by:

a. Revising the section heading;

b. In paragraph (a) by adding the word ''(CEMS)'' after the words ''continuous emission monitoring system'' in the first sentence and by revising the words '' NO_X continuous emission monitoring system'' to read '' NO_X-diluent CEMS'' in the second sentence;

c. In paragraph (d)(2) by revising the word '' NO_X'' to read '' NO_X-diluent'' in the second sentence and by adding a new third sentence; and

d. In paragraph (e) by revising the reference to ''(c)'' to read ''(d)''.

The revisions and additions read as follows:

§ 75.12 Specific provisions for monitoring NO_X emission rate (NO_X-diluent monitoring systems).

* * * * *

(d) * * *

(2) * * * If the required CEMS has not been installed and certified by that date, the owner or operator shall report the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter) for each unit operating hour, starting with the first unit operating hour after the deadline and continuing until the CEMS has been provisionally certified. For each unit operating hour in which the MER is reported, the MER shall be specific to the type of fuel being combusted in the unit.

* * * * *

10. Section 75.13 is amended by:

a. Revising the heading and first sentence of paragraph (b); and

b. Revising the first sentence of paragraph (c).

The revisions and additions read as follows:

§ 75.13 Specific provisions for monitoring CO_2 emissions.

* * * * *

(b) *Determination of CO_2 emissions using appendix G to this part.* If the owner or operator chooses to use the appendix G method, then the owner or operator shall follow the procedures in appendix G to this part for estimating daily CO_2 mass emissions based on the measured carbon content of the fuel and the amount of fuel combusted. * * *

(c) *Determination of CO_2 mass emissions using an O_2 monitor according to appendix F to this part.* The owner or operator shall determine hourly CO_2 concentration and mass emissions with a flow monitoring system; a continuous O_2 concentration monitor; fuel F and F_C factors; and, where O_2 concentration is measured on a dry basis (or where Equation F–14b in appendix F to this part is used to determine CO_2 concentration), either a continuous moisture monitoring system, as specified in § 75.11(b)(2), or a fuel-specific default moisture percentage (if applicable), as defined in § 75.11(b)(1); and by using the methods and procedures specified in appendix F to this part. * * *

* * * * *

§ 75.15 [Reserved].

11. Section 75.15 is removed and reserved.

12. Section 75.16 is amended by:

a. Removing and reserving all of paragraph (a);

b. Revising paragraph (b) heading and introductory text and paragraph (c);

c. Amending paragraphs (e) heading and introductory text, (e)(1), (e)(2), (e)(3), and (e)(4) by adding the word ''rate'' after each occurrence of the words ''heat input'' except for the last occurrence in paragraph (e)(1);

d. In paragraph (e)(1) by revising the reference to ''(a)'' to read ''(b)'' in the first sentence, and by removing ''(a)(1)(ii), (a)(2)(ii),'' and the comma after ''(b)(1)(ii)'' in the third sentence;

e. In paragraph (e)(2) by revising the words ''appendix F of this part'' to read ''appendix F to this part''; and

f. In paragraph (e)(3) by adding the words '', in conjunction with the appropriate unit and stack operating times'' after the words ''utilizing the common stack''.

The revisions and additions read as follows:

§ 75.16 Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO_2 emissions and heat input determinations.

* * * * *

(b) *Common stack procedures.* The following procedures shall be used when more than one unit uses a common stack:

* * * * *

(c) *Unit with bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack so as to avoid the installed SO_2 continuous emission monitoring system and flow monitoring system, the owner or operator shall either:

(1) Install, certify, operate, and maintain separate SO_2 continuous emission monitoring systems and flow monitoring systems on the main stack and the bypass stack and calculate SO_2 mass emissions for the unit as the sum of the SO_2 mass emissions measured at the two stacks; or

(2) Monitor SO_2 mass emissions at the main stack using SO_2 and flow rate monitoring systems and measure SO_2 mass emissions at the bypass stack using the reference methods in § 75.22(b) for SO_2 and flow rate and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain SO_2 and flow rate monitoring systems only on the main stack. If this option is chosen, report the following values for each hour during which emissions pass through the bypass stack: the maximum potential concentration of SO_2 as determined under section 2.1.1.1 of appendix A to this part (or, if available, the SO_2 concentration measured by a certified monitor located at the control device inlet), and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part. If the bypass stack is also unmonitored for NO_X, CO_2, or moisture, report the following values for each hour in which the bypass stack is used: the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part, the maximum potential NO_X emission rate, as defined in section 2.1.2.1(b) of appendix A to this part, the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part, and, if O_2 concentration is used to determine the hourly heat input rate, report the minimum potential O_2 concentration (as defined in section 2.1.3.2 of appendix A to this part). The maximum potential SO_2 concentration and the maximum potential NO_X

emission rate shall be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(b)(5)). This option may only be used if use of the bypass stack is limited to unit startup, emergency situations (e.g., malfunction of a flue gas desulfurization system), and periods of routine maintenance of the flue gas desulfurization system or maintenance on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, with respect to SO_2, flow rate, or any other parameter that is monitored only at the main stack.

* * * * *

13. Section 75.17 is amended by:

a. Removing the hyphen from the word ''by-pass'' in the section heading;

b. In the introductory text by revising the words ''and (c)'' to read ''(c), and (d)'';

c. In paragraph (b)(1) by revising the word ''NO_X'' to read ''NO_X-diluent'';

d. Revising the paragraph heading and first sentence of paragraph (c) introductory text;

e. Revising paragraphs (c)(1) and (c)(2); and

f. Adding new paragraph (d).

The revisions and additions read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO_X emission rate.

* * * * *

(c) *Unit with multiple stacks or ducts.* When the flue gases from an affected unit discharge to the atmosphere through two or more stacks or when flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall monitor the NO_X emission rate in a way that is representative of each affected unit. * * *

(1) Install, certify, operate, and maintain a NO_X-diluent continuous emission monitoring system and a flow monitoring system in each stack or duct and determine the NO_X emission rate for the unit as the Btu-weighted average of the NO_X emission rates measured in the stacks or ducts using the heat input estimation procedures in appendix F to this part. Alternatively, for units that are eligible to use the procedures of appendix D to this part, the owner or operator may monitor heat input and NO_X emission rate at the unit level, in lieu of installing flow monitors on each stack or duct. If this alternative unit-level monitoring is performed, report, for each unit operating hour, the highest emission rate measured by any of the NO_X-diluent monitoring systems installed on the individual stacks or ducts as the hourly NO_X emission rate for the unit, and report the hourly unit heat input as determined under appendix D to this part. Also, when this alternative unit-level monitoring is performed, the applicable NO_X missing data procedures in §§ 75.31 or 75.33 shall be used for each unit operating hour in which a quality-assured NO_X emission rate is not obtained for one or more of the individual stacks or ducts; or

(2) Provided that the products of combustion are well-mixed, install, certify, operate, and maintain a NO_X continuous emission monitoring system in one stack or duct from the affected unit and record the monitored value as the NO_X emission rate for the unit. The owner or operator shall account for NO_X emissions from the unit during all times when the unit combusts fuel. Therefore, this option shall not be used if the monitored stack or duct can be bypassed (e.g., by using dampers). Follow the procedure in § 75.17 for units with bypass stacks. Further, this option shall not be used unless the monitored NO_X emission rate truly represents the NO_X emissions discharged to the atmosphere (e.g., the option is disallowed if there are any additional NO_X emission controls downstream of the monitored location).

(d) *Unit with a main stack and bypass stack configuration.* For an affected unit with a discharge configuration consisting of a main stack and a bypass stack, the owner or operator shall either:

(1) Follow the procedures in paragraph (c)(1) of this section; or

(2) Install, certify, operate, and maintain a NO_X-diluent CEMS only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, with respect to NO_X or any other parameter that is monitored only at the main stack. For each unit operating hour in which the bypass stack is used, report the maximum potential NO_X emission rate (as defined in § 72.2 of this chapter). The maximum potential NO_X emission rate shall be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(c)(8)). In addition, if SO_2, CO_2, flow rate, or (if applicable) moisture monitoring systems are installed only on the main stack and not on the bypass stack, report the following values for each hour in which the bypass stack is used: The maximum potential values of SO_2 concentration, CO_2 concentration, and stack gas flow rate, as defined in section 2 of appendix A to this part, the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part, and, if O_2 concentration is used to determine the hourly heat input rate, report the minimum potential O_2 concentration (as defined in section 2.1.3.2 of appendix A to this part). If SO_2 emissions and the unit heat input are determined using a fuel flowmeter in accordance with appendix D to this part and if CO_2 emissions are estimated using the procedures in appendix G to this part, report SO_2 emissions and CO_2 emissions in accordance with appendices D and G to this part, and report the actual measured heat input rate for each hour in which the bypass stack is used.

14. Section 75.19 is amended by:

a. Revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(2)(i), (a)(2)(ii), (b)(1), (b)(2), (b)(3), (c)(1)(iv)(A), (c)(1)(iv)(C), and (c)(3)(ii)(H);

b. In paragraph (b)(4) introductory text by revising the words ''unit commencing operation after January 1, 1997'' to read ''new or newly-affected unit'';

c. In paragraph (b)(4)(ii) by revising the words '' NO_X, and CO_2'' to read ''CO_2, and/or NO_X'';

d. In paragraph (b)(4)(iii) by revising the words ''and NO_X'' in the first sentence to read ''and/or NO_X'' and by revising the words ''tables 1, 2 and 3'' to read ''tables LM–1, LM–2, and LM–3'' in the second sentence;

e. Removing and reserving paragraph (c)(1)(iv)(B)(*3*);

f. In paragraph (c)(1)(iv)(B)(*4*) by revising the reference to ''(c)(1)(iv)(B)(*3*)'' to read ''(c)(1)(iv)(B)(*1*)'';

g. In the first sentence of paragraph (c)(1)(iv)(D) by revising the words '', each unit in a group of units sharing a common fuel supply, or'' to read ''or group of'';

h. In paragraph (c)(1)(iv)(E) by removing the words '', each low mass emission unit in a group of units combusting a common fuel,'';

i. Revising the first and last sentences of (c)(1)(iv)(G);

j. In the first sentence of (c)(1)(iv)(H) by adding the words ''(including units that use dry low-NO_X technology),'' after the first occurrence of the words ''NO_X emission controls'';

k. In the last sentence of (c)(1)(iv)(H)(*1*) by adding the words '', and the appropriate default NO_X emission rate from Table LM–2 shall be reported instead'' after the words ''for that hour'';

l. Adding new paragraph (c)(1)(iv)(I);

m. In paragraph (c)(2)(iii) by revising the word ''output'' to read ''load'' and adding the words ''per hour'' after the words ''pounds of steam'';

n. In paragraph (c)(2)(iv) by adding the words ''add-on'' after the words ''unit with'' and adding the words ''(including dry low-NO_X technology)'' after the words ''of any kind'';

o. In paragraph (c)(3)(i) by adding ''HI_{hr},'' after the words ''of this section,'' in the first sentence, by revising Eq. LM–1 and the accompanying variable definitions, and by adding a new paragraph (c)(3)(i)(D);

p. Removing the word ''use'' in the second sentence of paragraph (c)(3)(ii)(D)(*1*);

q. Adding a sentence following the first sentence of paragraphs (c)(3)(ii)(E), (c)(3)(ii)(G), and (c)(4)(ii)(C);

r. In the definition of M_{qtr} in Equation LM–2 in paragraph (c)(3)(ii)(E) by removing the word ''entire'';

s. In the definition of Q_g in Equation LM–3 in paragraph (c)(3)(ii)(E) by revising the word ''Value'' to read ''Volume'' and adding parentheses around the words ''standard cubic feet (scf)'';

t. In paragraph (c)(3)(ii)(F) by adding the words '', using Equation LM–4'' after the reference to ''LM–3'';

u. Revising the definition of variables following Equations LM–7 and LM–8 in paragraph (c)(3)(ii)(I), the definition of variables following Equations LM–7a and LM–8a in paragraph (c)(3)(ii)(J), and the definitions of the first two variables following Equation LM–10 in paragraph (c)(4)(ii)(A);

v. In the definition of variable ''EF_{SO2}'' for Equation LM–9 in paragraph (c)(4)(i) by revising the reference ''table 1'' to read ''table LM–1'';

w. In paragraph (e)(5) by revising the words ''which have NO_X emission controls of any kind'' to read ''which have add-on NO_X emission controls of any kind (including dry low-NO_X technology)''; and

x. In Table LM–5 that follows paragraph (e) by adding the word ''Other'' before ''Natural Gas'' in the first column of the second entry of the table.

The revisions and additions read as follows:

§ 75.19 Optional SO_2, NO_X, and CO_2 emissions calculation for low mass emissions units.

(a) * * *

(1) * * *

(i) A low mass emissions unit is an affected unit that burns only natural gas or fuel oil (i.e., diesel fuel or residual oil) and for which:

(A) An initial demonstration is provided, in accordance with paragraph (a)(2) of this section, which shows that the unit emits no more than:

(*1*) 25 tons of SO_2 annually and 50 tons of NO_X annually, for Acid Rain Program affected units (including units which are also subject to the provisions of subpart H of this part),

(*2*) 50 tons of NO_X annually, for units which are subject to the provisions of subpart H of this part and which report emissions data on a year-round basis, in accordance with § 75.74(b), or

(*3*) 25 tons of NO_X per ozone season, for units which are subject to the provisions of subpart H of this part and which report emissions data only during the ozone season, in accordance with § 75.74(b); and

(B) An annual demonstration is provided thereafter, using one of the allowable methodologies in paragraph (c) of this section, showing that the low mass emission unit continues to emit no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section.

(ii) Any qualifying unit must start using the low mass emissions excepted methodology as follows:

(A) For a unit that reports emission data on a year-round basis, begin using the methodology in the first unit operating hour in the calendar year in which the unit (as indicated in the certification application) will first qualify as a low mass emissions unit; or

(B) For a unit that is subject to subpart H of this part and that reports only during the ozone season according to § 75.74(c), begin using the methodology in the first unit operating hour in the ozone season in which the unit (as indicated in the certification application) will first qualify as a low mass emissions unit.

(2) * * *

(i) If the designated representative submits a certification application to use the low mass emissions excepted methodology and the Administrator (or permitting authority) certifies the use of such methodology. The certification application shall be submitted no later than 45 days prior to the date on which use of the low mass emissions excepted methodology will commence. The certification application must contain, as applicable, the information in paragraph (a)(2)(i)(A), (a)(2)(i)(B), or (a)(2)(i)(C) of this section.

(A) *Acid Rain Program affected units.* For affected units under the Acid Rain Program (including units which are also subject to the provisions of subpart H of this part), the certification application shall contain:

(*1*) Actual SO_2 and NO_X mass emissions data for each of the three calendar years prior to the calendar year in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator that the unit emits no more than 25 tons of SO_2 and no more than 50 tons of NO_X annually; and

(*2*) Calculated SO_2 and NO_X mass emissions, for each of the three calendar years prior to the calendar year in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator that the unit emits no more than 25 tons of SO_2 and no more than 50 tons of NO_X annually. The calculated emissions for each year shall be determined using either the maximum rated heat input methodology described in paragraph (c)(3)(i) of this section or the long term fuel flow heat input methodology described in paragraph (c)(3)(ii) of this section, in conjunction with the appropriate emission rate from paragraph (c)(1)(i) of this section for SO_2 and paragraph (c)(1)(ii) or (c)(1)(iv) of this section for NO_X.

(B) *Non-Acid Rain subpart H units reporting on a year-round basis.* For units that are not affected under the Acid Rain Program, but are subject to the provisions of subpart H of this part, and which report emissions data on a year-round basis, the certification application shall contain:

(*1*) Actual NO_X mass emissions data for each of the three calendar years prior to the calendar year in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator (or the permitting authority if subpart H is used under a State approved SIP) that the unit emits no more than 50 tons of NO_X annually; and

(*2*) Calculated NO_X mass emissions, for each of the three calendar years prior to the calendar year in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator that the unit emits no more than 50 tons of NO_X annually. The calculated emissions for each year shall be determined using either the maximum rated heat input methodology described in paragraph (c)(3)(i) of this section or the long term fuel flow heat input methodology described in paragraph (c)(3)(ii) of this section, in conjunction with the appropriate NO_X emission rate from paragraph (c)(1)(ii) or (c)(1)(iv) of this section.

(C) *Non-Acid Rain subpart H units, reporting ozone season data only.* For units that are not affected under the Acid Rain Program, but are subject to the provisions of subpart H of this part, and which report emissions data only

during the ozone season, the certification application shall contain:

(*1*) Actual NO_X mass emissions data for each of the three ozone seasons prior to the ozone season in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator (or the permitting authority if subpart H is used under a State approved SIP) that the unit emits no more than 25 tons of NO_X per ozone season; and

(*2*) Calculated NO_X mass emissions, for each of the three ozone seasons prior to the ozone season in which the unit will first qualify as a low mass emissions unit, demonstrating to the satisfaction of the Administrator that the unit emits no more than 25 tons of NO_X per ozone season. The calculated emissions for each ozone season shall be determined using either the maximum rated heat input methodology described in paragraph (c)(3)(i) of this section or the long term fuel flow heat input methodology described in paragraph (c)(3)(ii) of this section, in conjunction with the appropriate NO_X emission rate from paragraph (c)(1)(ii) or (c)(1)(iv) of this section.

(ii) When the three full years (or, if applicable, three full ozone seasons) of actual, historical SO_2 and/or NO_X mass emissions data required under paragraph (a)(2)(i) of this section are not available, the designated representative may submit an application to use the low mass emissions excepted methodology based upon a combination of historical SO_2 and NO_X mass emissions data and projected SO_2 and/or NO_X mass emissions, totaling three years (or ozone seasons). Historical data must be used for any years (or ozone seasons) in which historical data exists and projected data should be used for any remaining future years (or ozone seasons). For example, if an Acid Rain Program unit commenced operation two years ago, the designated representative may submit actual, historical data for the previous two years and one year of projected emissions for the current calendar year or, for a new (or newly-affected) unit for which no actual historical data are available, the designated representative may submit three years of projected emissions, beginning with the current calendar year. Any actual or projected annual (or ozone season) emissions must demonstrate to the satisfaction of the Administrator that the unit will emit less than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. Projected emissions shall be calculated using either the default emission rates in tables LM–1, LM–2, and LM–3 of this section, or, for NO_X emission rate, a fuel-and-unit-specific NO_X emission rate determined in accordance with the testing procedures in paragraph (c)(1)(iv) of this section, in conjunction with projections of unit operating hours or fuel type and fuel usage, according to one of the allowable calculation methodologies in paragraph (c) of this section.

(b) * * *

(1) Once a low mass emission unit has qualified for and has started using the low mass emissions excepted methodology, an annual demonstration is required, showing that the unit continues to emit no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. The calculation methodology used for the annual demonstration shall be the same methodology, from paragraph (c) of this section, by which the unit initially qualified to use the low mass emissions excepted methodology. The annual demonstration will be based upon the emissions data which the Administrator used to determine whether the unit held sufficient allowances for the calendar year or ozone season.

(2) If any low mass emission unit fails to provide the required annual demonstration under paragraph (b)(1) of this section, such that the calculated cumulative emissions for the unit exceed the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section at the end of any calendar year or ozone season, then:

(i) The low mass emission unit shall be disqualified from using the low mass emissions excepted methodology as of December 31 of the following calendar year (for sources that report emission data on a year-round basis) or as of December 31 of the calendar year in which the unit exceeds the number of tons of NO_X specified in paragraph (a)(1)(i)(A)(*3*) of this section (for sources that report emission data only during the ozone season); and

(ii) The owner or operator of the low mass emission unit shall install, certify, and report SO_2 (Acid Rain Program units only), NO_X, and CO_2 (Acid Rain Program units only) emissions from monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13 by December 31 of the year after the unit exceeded the number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A)(*1*) or paragraph (a)(1)(i)(A)(*2*) of this section (for sources that report emission data on a year-round basis) or by May 1 of the year after the unit exceeds the number of tons of NO_X specified in paragraph (a)(1)(i)(A)(*3*) of this section (for sources that report emission data only during the ozone season). If the required monitoring systems have not been installed and certified by the applicable deadline, the owner or operator shall report the following values for each unit operating hour, beginning with the first operating hour after the deadline and continuing until the monitoring systems have been provisionally certified: the maximum hourly heat input for the unit, as defined in § 72.2 of this chapter; the SO_2 emissions, in lb/hr, calculated using the applicable default SO_2 emission rate in Table LM–1 in this section and the maximum hourly unit heat input; the CO_2 emissions, in tons/hr, calculated using the applicable default CO_2 emission rate in Table LM–3 in this section and the maximum hourly unit heat input; and the fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(3) If a low mass emission unit that initially qualifies to use the low mass emissions excepted methodology under this section changes fuels, such that a fuel other than those allowed for use in the low mass emissions methodology (i.e., natural gas, diesel fuel, or residual oil) is combusted in the unit, the unit shall be disqualified from using the low mass emissions excepted methodology as of the first hour that the new fuel is combusted in the unit. The owner or operator shall install, certify, and report SO_2 (Acid Rain Program units only), NO_X, and CO_2 (Acid Rain Program units only) from monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13 prior to a change to such fuel. If the required monitoring systems are not installed and certified prior to the fuel switch, the owner or operator shall report (as applicable) the maximum potential concentration of SO_2, CO_2 and NO_X, the maximum potential NO_X emission rate, the maximum potential flowrate, the maximum potential hourly heat input and the maximum (or minimum, if appropriate) potential moisture percentage, from the date and hour of the fuel switch until the monitoring systems are certified or until probationary calibration error tests of the monitors are passed and the conditional data validation procedures in § 75.20(b)(3) begin to be used. All maximum and minimum potential values shall be specific to the new fuel and shall be determined in a manner consistent with section 2 of appendix A to this part and § 72.2 of this chapter. The owner or operator must notify the Administrator (or the permitting authority) in the case where a unit switches fuels without previously having installed and certified a SO_2,

NO_X and CO_2 monitoring system meeting the requirements of §§ 75.11, 75.12, and 75.13.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) Except as otherwise provided in this paragraph or in paragraphs (c)(1)(iv)(F) and (G) of this section, determine a fuel-and-unit-specific NO_X emission rate by conducting a four load NO_X emission rate test procedure as specified in section 2.1 of appendix E to this part, for each type of fuel combusted in the unit. For a group of units sharing a common fuel supply, the appendix E testing must be performed on each individual unit in the group, unless some or all of the units in the group belong to an identical group of units, as defined in paragraph (c)(1)(iv)(B) of this section, in which case, representative testing may be conducted on units in the identical group of units, as described in paragraph (c)(1)(iv)(B) of this section. For a unit or group of identical units that qualify under § 75.19(c)(1)(iv)(I), single load testing is allowed in lieu of the four load testing. For the purposes of this section, make the following modifications to the appendix E test procedures:

(*1*) Do not measure the heat input as required under section 2.1.3 of appendix E to this part.

(*2*) Do not plot the test results as specified under section 2.1.6 of appendix E to this part.

(*3*) When using method 20 for turbines do not correct the NO_X concentration to 15 percent O_2.

(*4*) If the test is performed on an uncontrolled diffusion flame turbine (i.e., any turbine not using dry low NO_X lean premixed combustion technology or any turbine without steam or water injection) a correction to the observed average NO_X concentration from each run of the Method 20 test must be applied using the following equation:

$$NOx_{corr} = NOx_{obs}\left(\frac{P_r}{P_o}\right)^{0.5} e^{19(H_o - H_r)}\left(\frac{T_r}{T_a}\right)^{1.53} \qquad \text{(Eq. LM-1a)}$$

Where:

NO_{Xcorr} = Corrected NO_X concentration (ppm).

NO_{Xobs} = Average measured NO_X concentration for each run of the Method 20 test (ppm).

P_r = Average annual atmospheric pressure (or average ozone season atmospheric pressure for a subpart H unit that reports data only during the ozone season) at the nearest weather station (e.g., a standardized NOAA weather station located at the airport) for the year (or ozone season) prior to the year of the test (in Hg).

P_o = Observed atmospheric pressure during the test run (in Hg).

H_r = Average annual atmospheric humidity ratio (or average ozone season humidity ratio for a subpart H unit that reports data only during the ozone season) at the nearest weather station, for the year (or ozone season) prior to the year of the test (lb moisture/lb air).

H_o = Observed humidity ratio during the test run (lb moisture/lb air).

T_r = Average annual atmospheric temperature (or average ozone season atmospheric temperature for a subpart H unit that reports data only during the ozone season) at the nearest weather station, for the year (or ozone season) prior to the year of the test (°R).

T_a = Observed atmospheric temperature during the test run (°R).

(B) * * *

* * * * *

(C) Based on the results of the part 75 appendix E testing, determine the fuel-and-unit-specific NO_X emission rate as follows:

(*1*) If a four-load test is performed for an individual low mass emission unit with no NO_X emissions controls of any kind or for a turbine with water injection, steam injection, or water/fuel emulsion and no other type of add-on NO_X controls, the highest three run average NO_X emission rate obtained at any load in the part 75 appendix E test for a particular type of fuel shall be the fuel-and-unit-specific NO_X emission rate, for that type of fuel.

(*2*) [Reserved]

(*3*) If representative four-load testing is performed according to paragraph (c)(1)(iv)(B)(*2*) of this section for a group of identical low mass emission units with no NO_X controls of any kind on any of the units, or for a group of identical turbines with water injection, steam injection, or water/fuel emulsion on all units and no other type of add-on NO_X controls, the fuel-and-unit-specific NO_X emission rate for all units in the group, for a particular type of fuel, shall be the highest three run average NO_X emission rate obtained at any load from any unit tested in the group, for that type of fuel.

(*4*) If a four-load test is performed for an individual low mass emission unit which has add-on NO_X emission controls (except for a turbine that uses water injection, steam injection, or water/fuel emulsion and has no other type of add-on NO_X controls), the fuel-and-unit-specific NO_X emission rate for each type of fuel combusted in the unit shall be the higher of:

(*i*) The highest emission rate from any load of the appendix E test for that type of fuel; or

(*ii*) 0.15 lb/mmBtu.

(*5*) [Reserved]

(*6*) If representative four-load testing is performed according to paragraph (c)(1)(iv)(B)(*2*) of this section for a group of identical low mass emission units having identical add-on NO_X controls (except for a group of identical turbines with water injection, steam injection, or water fuel emulsion and no other type of add-on NO_X controls), the fuel-and-unit-specific NO_X emission rate for each unit in the group of units, for a particular type of fuel, shall be the higher of:

(*i*) The highest NO_X emission rate from all appendix E tests of all tested units in the group, for that type of fuel; or

(*ii*) 0.15 lb/mmBtu.

(*7*) If a single-load test is performed according to § 75.19(c)(1)(iv)(I) for an individual low mass emission unit with no NO_X emissions controls of any kind or for a turbine with water injection, steam injection, or water/fuel emulsion and no other type of add-on NO_X controls, the fuel-and-unit-specific NO_X emission rate for a particular type of fuel combusted in the unit shall be either:

(*i*) The three run average NO_X emission rate obtained in the appendix E test for that type of fuel; or

(*ii*) For an uncontrolled turbine which is tested only at base load and which is capable of operating at a higher load or higher internal operating temperature, the three run average NO_X emission rate obtained in the appendix E tests for that type of fuel, multiplied by 1.15.

(*8*) If representative single-load testing is performed according to § 75.19(c)(1)(iv)(I) for a group of identical low mass emission units with no NO_X controls of any kind on any of the units, or an identical group of turbines with water injection, steam

injection, or water/fuel emulsion and no other type of add-on NO_X controls, the fuel-and-unit-specific NO_X emission rate for all units in the group, for a particular type of fuel shall be:

(*i*) The highest three run average NO_X emission rate obtained for that type of fuel in any of the appendix E tests; or

(*ii*) For a group of uncontrolled turbines which are tested only at base load and which are capable of operating at a higher peak load or higher internal operating temperature, the highest three run average NO_X emission rate obtained in any of the appendix E tests for that type of fuel, multiplied by 1.15.

* * * * *

(G) Low mass emission units for which at least 3 years of quality-assured NO_X emission rate data from a NO_X-diluent CEMS and corresponding fuel usage data are available may determine fuel-and-unit-specific NO_X emission rates from the actual data using the following procedure. * * * Use the 95th percentile value for each data set as the fuel-and-unit-specific NO_X emission rate, except that for a unit with add-on NO_X emission controls (excluding turbines with water injection, steam injection, or water/fuel emulsion and no other type of add-on NO_X controls), if the 95th percentile value is less than 0.15 lb/mmBtu, a value of 0.15 lb/mmBtu shall be used as the fuel-and-unit-specific NO_X emission rate.

* * * * *

(I) Notwithstanding the requirements in paragraph (c)(1)(iv)(A) of this section, for a unit (or group of identical units) with no NO_X controls of any kind or for a turbine (or group of identical turbines) with water injection, steam injection, water/fuel emulsion, and no other type of add-on NO_X controls, single-load appendix E testing at the normal operating load may be performed instead of a four load test, if the unit has operated (or if all units in the group of identical units have operated) at a single load level for at least 85.0 percent of all operating hours in the previous three years (12 calendar quarters) prior to the calendar quarter of the appendix E test. To determine whether a unit qualifies for single-load testing, proceed as follows. Determine the range of operation of the unit, according to section 6.5.2.1 of appendix A to this part. Divide the range of operation into four equal load bands. For example, if the range of operation extends from 20 MW to 100 MW, the four equal load bands would be: band #1: 20 MW to 40 MW; band #2: 41 MW to 60 MW; band #3: 61 MW to 80 MW; and band #4: 81 to 100 MW. Then, perform a historical load analysis for all unit operating hours in the 12 calendar quarters preceding the quarter of the test. Determine the percentage of the data that fall in each load band. For a unit which is not part of a group of identical units, if 85.0 percent or more of the data fall within one load band, this is the normal load level for the unit and single-load testing may be performed at any point within that load band. For a group of identical units, if each unit in the group meets the 85.0 percent criterion, then representative single-load testing within the normal load band(s) may be performed. For combustion turbines that are operated to produce approximately constant output (in MW) but which use internal operating and exhaust temperatures and not the actual output in MW to control operation of the turbine, the internal operating temperature setpoint may be used as a surrogate for load in demonstrating that the unit qualifies for single-load testing. To qualify for single load testing, the owner or operator must document that the unit has operated within ±10 percent of the setpoint temperature for 85.0 percent of the unit operating hours in the previous 12 calendar quarters. If the setpoint temperature rather than unit load is used to justify single-load testing, the designated representative must certify in the monitoring plan for the unit that this is the manner of operation and must document the setpoint temperature. If the unit normally operates at a base load setpoint temperature but is capable of operating in a higher output peak load when demand requires, then the test must either be performed at peak load or a multiplier of 1.15 shall be used to adjust a base load test result to approximate a peak load test result.

* * * * *

(3) * * *

(i) * * *

(B) * * *

$$HI_{qtr} = \sum_{1}^{n} HI_{hr} \qquad \text{(Eq. LM–1)}$$

Where:

n = Number of unit operating hours in the quarter.

HI_{hr} = Hourly heat input under paragraph (c)(3)(i)(A) of this section (mmBtu).

* * * * *

(D) For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly heat input for the second calendar quarter of the year shall include only the heat input for the months of May and June, and the cumulative ozone season heat input shall be the sum of the quarterly heat input values for the second and third calendar quarters of the year.

(ii) * * *

(E) * * * For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly heat input for the second calendar quarter of the year shall include only the heat input for the months of May and June. * * *

* * * * *

(G) * * * For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the cumulative ozone season heat input shall be the sum of the quarterly heat input values for the second and third calendar quarters of the year.

(H) For each low mass emission unit or each low mass emission unit in an identical group of units, the owner or operator shall determine the cumulative quarterly unit load in megawatts or thousands of pounds of steam per hour. The quarterly cumulative unit load shall be the sum of the hourly unit load values recorded under paragraph (c)(2) of this section and shall be determined using Equation LM–5 or LM–6. For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly cumulative load for the second calendar quarter of the year shall include only the unit loads for the months of May and June.

$$MW_{qtr} = \sum_{\text{all-hours}} MW \qquad \text{Eq. LM} - 5 \text{ (for MW output)}$$

$$ST_{qtr} = \sum_{\text{all-hours}} ST \qquad \text{Eq. LM} - 6 \text{ (for steam output)}$$

Where:

MW_{qtr} = Sum of all unit operating loads recorded during the quarter by the unit (MW).

$ST_{fuel\text{-}qtr}$ = Sum of all hourly steam loads recorded during the quarter by the unit (klb of steam/hr).

MW = Unit operating load for a particular unit operating hour (MW).

ST = Unit steam load for a particular unit operating hour (klb of steam/hr).

(I) * * *

(Eq LM–8 for steam output) * * *

Where:

HI_{hr} = Hourly heat input to the unit (mmBtu).

MW_{hr} = Hourly operating load for the unit (MW).

ST_{hr} = Hourly steam load for the unit (klb of steam/hr).

(J) * * *

(Eq LM–8a for steam output) * * *

Where:

HI_{hr} = Hourly heat input to the individual unit (mmBtu).

MW_{hr} = Hourly operating load for the individual unit (MW).

ST_{hr} = Hourly steam load for the individual unit (klb of steam/hr).

$\sum MW_{qtr}$ all-units = Sum of the quarterly operating loads (from Eq. LM–5) for all units in the group (MW).

$\sum ST_{qtr}$ all-units = Sum of the quarterly steam loads (from Eq. LM–6) for all units in the group (klb of steam/hr).

(4) * * *

(ii) * * *

(A) * * *

(Eq LM–10) * * *

W_{NOX} = Hourly NO_X mass emissions (lbs).

EF_{NOX} = Either the NO_X emission factor from Table LM–2 of this section or the fuel- and unit-specific NO_X emission rate determined under paragraph (c)(1)(iv) of this section (lb/mmBtu). * * *

* * * * *

(C) * * * For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the ozone season NO_X mass emissions for the unit shall be the sum of the quarterly NO_X mass emissions, as determined under paragraph (c)(4)(ii)(B) of this section, for the second and third calendar quarters of the year.

* * * * *

15. Section 75.20 is amended by:

a. Revising paragraphs (b)(2), (b)(3)(i), (c)(2)(ii), (c)(2)(iii), (c)(4) introductory text, (c)(4)(i) through (iii), (g)(2), (h)(3), (h)(4) introductory text, (h)(4)(i) and (h)(4)(ii);

b. In the first sentence of paragraph (a) by removing the words ‘‘, which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system,’’;

c. In the first sentence of paragraph (a)(3) by revising the words ‘‘section for each continuous emission or opacity monitoring system or component thereof,’’ to read ‘‘section, each’’, removing the words ‘‘or component thereof’’ after each of the two additional occurrences of the words ‘‘opacity monitoring system’’ in paragraph (a)(3), and adding the word ‘‘conditional’’ before the words ‘‘data validation’’ in the last sentence;

d. In paragraph (a)(4)(iii) by removing each occurrence of the words ‘‘or component thereof’’, by adding the word ‘‘conditional’’ immediately before each occurrence of ‘‘data validation’’, and by removing the words ‘‘, until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests’’ that appear at the end of the second sentence;

e. In paragraph (a)(4)(iv) by removing the words ‘‘or component thereof,’’;

f. In the first sentence of paragraph (a)(5)(i) by removing the words ‘‘or component thereof’’ and by adding the words ‘‘(or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section are used, until a probationary calibration error test is passed following corrective actions in accordance with paragraph (b)(3)(ii) of this section)’’ after the words ‘‘successfully completed’’;

g. In paragraphs (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(vii)(A) by revising each occurrence of the word ‘‘consecutive’’ to read ‘‘cumulative’’;

h. Revising the third and fourth sentences of paragraph (b)(5);

i. Removing the second paragraph labeled (c)(1)(v) and paragraph (h)(4)(iii);

j. Adding new paragraphs (c)(2)(iv) and (h)(5);

k. In paragraph (d)(2)(iii) by removing the words ‘‘or SO_2-diluent’’ in the third sentence and by adding the word ‘‘cumulative’’ after ‘‘168’’ in the fifth sentence;

l. In paragraph (d)(2)(v) by adding the words ‘‘(or 720 hours in any ozone season, for sources that report emission data only during the ozone season, in accordance with § 75.74(c))’’ after the words ‘‘one calendar year’’ in the first sentence and by adding the words ‘‘(or ozone season, as applicable)’’ after the words ‘‘per calendar year’’ in the second sentence;

m. In the third sentence of (d)(2)(vii) by adding the words ‘‘, beginning with the letters ‘‘LK’’ (e.g., ‘‘LK1,’’ ‘‘LK2,’’ etc.)’’ after the words ‘‘replacement analyzer’’ and by adding the word ‘‘shall’’ before the word ‘‘specify’’;

n. Adding a sentence to the end of paragraph (g)(1)(i);

o. In paragraph (g)(5) by adding the words ‘‘(or recertified)’’ after the word ‘‘certified’’ in the first sentence, adding the words ‘‘or for disapproval of a recertification request’’ and ‘‘or denial of a recertification request’’ after, respectively, the first and second occurrence of the words ‘‘loss of certification’’ in the second sentence, removing the word ‘‘either’’ from the second sentence, adding the words ‘‘(or recertified)’’ after the word ‘‘certified’’ in the final sentence; and

p. In the last sentence of paragraph (h)(1) by adding the word ‘‘acceptable’’ before the word ‘‘water-to-fuel’’.

The revisions and additions read as follows:

§ 75.20 Initial certification and recertification procedures.

* * * * *

(b) * * *

(2) *Notification of recertification test dates.* The owner, operator or designated representative shall submit notice of testing dates for recertification under this paragraph as specified in § 75.61(a)(1)(ii).

(3) * * *

(i) The owner or operator shall either use substitute data, according to the

standard missing data procedures in §§ 75.33 through 75.37, or shall report emission data using a reference method or another monitoring system that has been certified or approved for use under this part, in the period extending from the hour of the replacement, modification or change made to a monitoring system that triggers the need to perform recertification testing until the hour of successful completion of all of the required recertification tests. Alternatively, if conditional data validation is used, as provided in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section, the owner or operator shall either use substitute data or shall report data from a certified CEMS or reference method, beginning with the hour of the replacement, modification, or change made to the monitoring system until the hour in which a probationary calibration error test (according to paragraph (b)(3)(ii) of this section) is passed. Notwithstanding this requirement, if the replacement, modification, or change requiring recertification of the CEMS is such that the historical data stream is no longer representative (e.g., where the SO_2 concentration and stack flow rate change significantly after installation of a wet scrubber), the owner or operator shall substitute for missing data as follows, in lieu of using the standard missing data procedures in §§ 75.33 through 75.37: for a change that results in a significantly higher concentration or flow rate, substitute maximum potential values according to the procedures in paragraph (a)(5) of this section; or for a change that results in a significantly lower concentration or flow rate, substitute data using the standard missing data procedures. The owner or operator shall then use the initial missing data procedures in § 75.31, beginning with the first hour of quality assured data obtained with the recertified monitoring system, unless otherwise provided by § 75.34 for units with add-on emission controls. The first hour of quality-assured data for the recertified monitoring system shall either be the hour after all recertification tests have been completed or, if conditional data validation is used, the first quality-assured hour shall be determined in accordance with paragraphs (b)(3)(ii) through (b)(3)(ix) of this section.

* * * * *

(5) *Approval or disapproval of request for recertification.* * * * In the event that a recertification application is disapproved, data from the monitoring system are invalidated and the applicable missing data procedures in §§ 75.31 or 75.33 shall be used from the date and hour of receipt of the disapproval notice back to the hour of the adjustment or change to the CEMS that triggered the need for recertification testing or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section were used, back to the hour of the probationary calibration error test that began the recertification test period. Data from the monitoring system remain invalid until all required recertification tests have been passed or until a subsequent probationary calibration error test is passed, beginning a new recertification test period. * * *

(c) * * *

(2) * * *

(ii) Relative accuracy test audits, as follows:

(A) For a flow monitor installed on a peaking unit or bypass stack, a single-load RATA at the normal load level, as defined in section 6.5.2.1(d) of appendix A to this part; or

(B) For all other flow monitors, a RATA at each of the three load levels (or operational levels) corresponding to the three flue gas velocities described in section 6.5.2(a) of appendix A to this part;

(iii) A bias test for the single-load flow RATA described in paragraph (c)(2)(ii)(A) of this section; and

(iv) A bias test (or bias tests) for the 3-level flow RATA described in paragraph (c)(2)(ii)(B) of this section, at the following load or operational level(s):

(A) At each load level designated as normal under section 6.5.2.1(d) of appendix A to this part, for units that produce electrical or thermal output; or

(B) At the operational level identified as normal in section 6.5.2.1(d) of appendix A to this part, for units that do not produce electrical or thermal output.

* * * * *

(4) For each CO_2 pollutant concentration monitor, each CO_2 monitoring system that uses an O_2 monitor to determine CO_2 concentration, and each diluent gas monitor used only to monitor heat input rate:

(i) A 7-day calibration error test;

(ii) A linearity check;

(iii) A relative accuracy test audit, where, for an O_2 monitor used to determine CO_2 concentration, the CO_2 reference method shall be used for the RATA; and

* * * * *

(g) * * *

(1) * * *

(i) * * * For orifice, nozzle, and venturi-type flowmeters, the results of primary element visual inspections and/or calibrations of the transmitters or transducers shall also be provided.

* * * * *

(2) *Initial certification, recertification, and QA testing notification.* The designated representative shall provide initial certification testing notification, recertification testing notification, and routine periodic retesting notification for an excepted monitoring system under appendix E to this part as specified in § 75.61. Initial certification testing notification, recertification testing notification, or periodic quality assurance testing notification is not required for an excepted monitoring system under appendix D to this part.

* * * * *

(h) * * *

* * * * *

(3) *Approval of certification applications.* The provisions for the certification application formal approval process in the introductory text of paragraph (a)(4) and in paragraphs (a)(4)(i), (ii), and (iv) of this section shall apply, except that ''continuous emission or opacity monitoring system'' shall be replaced with ''low mass emissions excepted methodology.'' Provisional certification status for the low mass emissions methodology begins when a complete certification application is received, and the methodology is considered to be certified either upon receipt of a written approval notice from the Administrator or, if such notice is not provided, at the end of the Administrator's 120 day review period. However, in contrast to CEM systems or appendix D and E monitoring systems, a provisionally certified or certified low mass emissions excepted methodology may not be used to report data under the Acid Rain Program or in a NO_X mass emissions reduction program under subpart H of this part prior to the applicable commencement date specified in § 75.19(a)(1)(ii).

(4) *Disapproval of low mass emissions unit certification applications.* If the Administrator determines that the certification application for a low mass emissions unit does not demonstrate that the unit meets the requirements of §§ 75.19(a) and (b), the Administrator shall issue a written notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and any emission data reported using the excepted methodology during the Administrator's 120-day review period shall be considered invalid. The owner or operator shall use the following

procedures when a certification application is disapproved:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation in which data were reported using the low mass emissions methodology until such time, date, and hour as continuous emission monitoring systems or excepted monitoring systems, where applicable, are installed and provisionally certified: the maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part; the maximum potential fuel flowrate, as defined in section 2.4.2 of appendix D to this part; the maximum potential values of fuel sulfur content, GCV, and density (if applicable) in Table D–6 of appendix D to this part; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter; the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part; or the maximum potential CO_2 concentration as defined in section 2.1.3.1 of appendix A to this part. For a unit subject to a State or federal NO_X mass reduction program where the owner or operator intends to monitor NO_X mass emissions with a NO_X pollutant concentration monitor and a flow monitoring system, substitute for NO_X concentration using the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, and substitute for volumetric flow using the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part; and

(ii) The designated representative shall submit a notification of certification test dates for the required monitoring systems, as specified in § 75.61(a)(1)(ii), and shall submit a certification application according to the procedures in paragraph (a)(2) of this section.

(5) *Recertification.* Recertification of an approved low mass emissions excepted methodology is not required. Once the Administrator has approved the methodology for use, the owner or operator is subject to the on-going qualification and disqualification procedures in § 75.19(b)(1), on an annual basis.

§ 75.21 [Amended].

16. Section 75.21 is amended by:

a. In paragraph (a)(7) by adding the words ''only for infrequent, non-routine operation (e.g.,'' after the words ''higher sulfur fuel(s)'' in the first sentence, by adding a closing parenthesis after the words ''short-term testing'' in the first sentence, and by revising in the last sentence the words ''720 unit (or stack) operating hour grace period'' to read ''grace period of 720 cumulative unit or stack operating hours'';

b. In paragraph (a)(8) by removing the words ''On and after April 1, 2000'' and by capitalizing the initial occurrence of the word ''the'';

c. In paragraph (a)(9) by revising in the first sentence the words ''exempted under paragraphs (a)(6) or (a)(7) of this section from the SO_2 RATA requirements of this part'' to read ''exempted from the SO_2 RATA requirements of this part under paragraphs (a)(6) or (a)(7) of this section'', and by revising in the last sentence the words ''720 unit (or stack) operating hour grace period'' to read ''grace period of 720 cumulative unit or stack operating hours''; and

d. In paragraph (e)(2) by removing the word ''another''.

17. Section 75.22 is amended by:

a. Removing the last sentence of paragraph (a) introductory text;

b. In the last sentence of paragraph (a)(4) by revising the word ''techniques'' to read ''wet bulb-dry bulb technique''; and

c. Adding a sentence to the end of paragraph (a)(5).

The revisions and additions read as follows:

§ 75.22 Reference test methods.

(a) * * *

(5) * * * Alternatively, Method 20 may be used as the reference method for relative accuracy test audits of NO_X CEMS installed on combustion turbines.

* * * * *

18. Section 75.24 is amended by:

a. Revising paragraph (a)(1); and

b. In paragraph (c)(2) by removing the words ''or certified portable monitor or''.

The revisions read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

(a) * * *

(1) For daily calibration error tests, an out-of-control period occurs when the calibration error of a pollutant concentration monitor exceeds the applicable specification in section 2.1.4 of appendix B to this part.

* * * * *

19. Section 75.30 is amended by:

a. In paragraph (a)(6) by removing the period at the end of the paragraph and replacing it with ''; or'';

b. Adding new paragraphs (a)(7) and (a)(8);

c. In the first sentence of paragraph (b) by adding the words ''percent moisture,'' after the words ''flow rate,''; and

d. In paragraphs (d)(1) and (d)(2) by removing the words ''§ 75.54(b)(5) or'' and the words ''as applicable,''.

The revisions and additions read as follows:

§ 75.30 General provisions.

(a) * * *

(7) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system or an approved alternative monitoring method under subpart E of this part. This requirement does not apply when a default percent moisture value, as provided in §§ 75.11(b) or 75.12(b), is used to account for the hourly moisture content of the stack gas; or

(8) A valid, quality-assured hour of heat input rate data (in mmBtu/hr) has not been measured and recorded for a unit from a certified flow monitor and a certified diluent (CO_2 or O_2) monitor or by an approved alternative monitoring system under subpart E of this part.

* * * * *

20. Section 75.31 is amended by:

a. Revising the first sentence of paragraph (a);

b. Revising paragraphs (c) introductory text and (c)(1);

c. Adding a new sentence to the beginning of paragraph (c)(2);

d. In paragraph (c)(3) by adding the words ''(or for non-load-based units using operational bins, when no prior quality-assured data exist in the corresponding operational bin)'' after the words ''higher load range''; and

e. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification of the required SO_2, CO_2, O_2 or moisture monitoring system(s) at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by CEMS(s) installed at that location), and during the first 2,160 quality-assured monitor operating hours following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at the unit or stack location, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section.

* * *

* * * * *

(c) *Volumetric flow and NO_X emission rate or NO_X concentration data (load ranges or operational bins used).* The procedures in this paragraph apply to affected units for which load-based

ranges or non-load-based operational bins, as defined, respectively, in sections 2 and 3 of appendix C to this part are used to provide substitute NO_X and flow rate data. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever prior quality-assured data exist in the load range (or operational bin) corresponding to the operating load (or operating conditions) at the time of the missing data period, the owner or operator shall substitute, by means of the automated data acquisition and handling system, for each hour of missing data, the arithmetic average of all of the prior quality-assured hourly flow rates, NO_X emission rates, or NO_X concentrations in the corresponding load range (or operational bin) as determined using the procedure in appendix C to this part. When non-load-based operational bins are used, if essential operating or parametric data are unavailable for any hour in the missing data period, such that the operational bin cannot be determined, the owner or operator shall, for that hour, substitute (as applicable) the maximum potential flow rate as specified in section 2.1.4.1 of appendix A to this part or the maximum potential NO_X emission rate or the maximum potential NO_X concentration as specified in section 2.1.2.1 of appendix A to this part.

(2) This paragraph (c)(2) does not apply to non-load-based units using operational bins. * * *

* * * * *

(d) *Non-load-based volumetric flow and NO_X emission rate or NO_X concentration data (operational bins not used).* The procedures in this paragraph apply only to affected units that do not produce electrical output (in megawatts) or thermal output (in klb/hr of steam) and for which operational bins are not used. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever prior quality-assured data exist at the time of the missing data period, the owner or operator shall substitute, by means of the automated data acquisition and handling system, for each hour of missing data, the arithmetic average of all of the prior quality-assured hourly average flow rates or NO_X emission rates or NO_X concentrations.

(2) Whenever no prior quality-assured flow rate, NO_X emission rate, or NO_X concentration data exist, the owner or operator shall, as applicable, substitute for each hour of missing data, the maximum potential flow rate as specified in section 2.1.4.1 of appendix A to this part or the maximum potential NO_X emission rate or the maximum potential NO_X concentration as specified in section 2.1.2.1 of appendix A to this part.

21. Section 75.32 is amended by:

a. Revising paragraph (a) introductory text;

b. In paragraph (a)(1) by adding the words ''or stack'' after the word ''unit'' and revising the word ''equation'' to read ''Equation''; and

c. Revising paragraph (a)(2) and the first three sentences of paragraph (a)(3).

The revisions and additions read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification of the required SO_2, CO_2, O_2 or moisture monitoring system(s) at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by CEMS(s) at that location), the owner or operator shall, upon completion of the first 720 quality-assured monitor operating hours, calculate and record, by means of the automated data acquisition and handling system, the percent monitor data availability for the SO_2 pollutant concentration monitor, the CO_2 pollutant concentration monitor, the O_2 or CO_2 diluent monitor used to calculate heat input, and the moisture monitoring system (as applicable). Similarly, following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at a unit or stack location, the owner or operator shall, upon completion of the first 2,160 quality-assured monitor operating hours, calculate and record, by means of the automated data acquisition and handling system, the percent monitor data availability for the flow monitor, the NO_X-diluent monitoring system, and the NO_X concentration monitoring system (as applicable). Notwithstanding these requirements, if three years (26,280 clock hours) have elapsed since the date and hour of initial certification and fewer than 720 (or 2,160, as applicable) quality-assured monitor operating hours have been recorded, the owner or operator shall begin calculating and recording the percent monitor data availability. The percent monitor data availability shall be calculated for each monitored parameter at each unit or stack location, as follows:

* * * * *

(2) Upon completion of 8,760 unit or stack operating hours following initial certification and thereafter, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 9 to calculate, hourly, percent monitor data availability. Notwithstanding this requirement, if three years (26,280 clock hours) have elapsed since initial certification and fewer than 8,760 unit or stack operating hours have been accumulated, the owner or operator shall begin using a modified version of Equation 9, as described in paragraph (a)(3) of this section.

$$\text{Percent monitor data availability} = \frac{\text{Total unit operating hours for which quality-assured data were recorded during previous 8,760 unit operating hours}}{8{,}760} \times 100 \qquad \text{(Eq. 9)}$$

(3) When calculating percent monitor data availability using Equation 8 or 9, the owner or operator shall include all unit operating hours, and all monitor operating hours for which quality-assured data were recorded by a certified primary monitor; a certified redundant or non-redundant backup monitor or a reference method for that unit; or by an approved alternative monitoring system under subpart E of this part. No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 9. For a unit that has accumulated fewer than 8,760 unit or stack operating hours in the previous three years (26,280 clock hours), use the words ''in the previous three years'' instead of ''during previous 8,760 unit or stack operating hours'' in Equation 9, and use ''total unit or stack operating

hours in the previous three years'' instead of ''8,760.'' * * *

* * * * *

22. Section 75.33 is amended by:

a. Revising paragraphs (a) and (c) introductory text;

b. Adding paragraphs (b)(5), (b)(6), (b)(7), (c)(7), (c)(8), (c)(9), (c)(10), (d), and (e);

c. In paragraphs (c)(1) introductory text and (c)(2) introductory text by removing the words ''or continuous emission monitoring system'';

d. In paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(2)(i), (c)(2)(ii)(A), and (c)(3) by adding the words ''or operational bin'' after each occurrence of the words ''unit load range'';

e. In paragraph (c)(3) by removing the words ''section 2 of'';

f. In paragraph (c)(4) by adding a sentence to the end of the paragraph;

g. In paragraph (c)(5) by adding a new first sentence and by adding the words ''recording during the previous 2,160 quality-assured monitor operating hours'' before the words ''at the next'';

h. In paragraph (c)(6) by revising the words ''or a higher load range'' to read ''(or a higher load range) or for the corresponding operational bin''; and

i. Redesignating Tables 1 and 2 from paragraph to follow paragraph (c)(9) and revising them.

The revisions and additions read as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X and flow rate.

(a) Following initial certification of the required SO_2, NO_X, and flow rate monitoring system(s) at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by CEMS(s) at that location) and upon completion of the first 720 quality-assured monitor operating hours (for SO_2) or the first 2,160 quality assured monitor operating hours (for flow, NO_X emission rate, or NO_X concentration), the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section and depicted in Table 1 (SO_2) and Table 2 of this section (NO_X, flow). Notwithstanding these requirements, if three years (26,280 clock hours) have elapsed since the date and hour of initial certification, and fewer than 720 (or 2,160, as applicable) quality assured monitor operating hours have been recorded, the owner or operator shall begin using the missing data procedures of this section. The owner or operator of a unit shall substitute for missing data using quality-assured monitor operating hours of data from no earlier than three years (26,280 clock hours) prior to the date and time of the missing data period.

(b) * * *

(5) The owner or operator may, for units that combust more than one type of fuel, elect to implement the missing data routines in paragraphs (b)(1) through (b)(4) of this section on a fuel-specific basis. If this option is selected, the owner or operator shall document this in the monitoring plan required under § 75.53. To implement this option, the owner or operator shall create and maintain a separate SO_2 concentration database for each type of fuel (or blend), in order to obtain the appropriate substitute data values when that fuel (or blend) is combusted. Also, for the purposes of providing substitute data under paragraph (b)(4) of this section, a separate, fuel-specific maximum potential SO_2 concentration (MPC) value shall be determined for each type of fuel (or blend) combusted in the unit, in a manner consistent with section 2.1.1.1 of appendix A to this part. For fuel that qualifies as pipeline natural gas or natural gas (as defined in § 72.2 of this chapter), the owner or operator shall, for the purposes of determining the MPC, either determine the maximum total sulfur content and minimum gross calorific value (GCV) of the gas by fuel sampling and analysis or shall use a default total sulfur content of 0.05 percent by weight (dry basis) and a default GCV value of 950 Btu/scf. The exact methodology used to determine each fuel-specific MPC value shall be documented in the monitoring plan for the unit or stack.

(6) If the owner or operator elects to switch from non-fuel-specific missing data routines to fuel-specific routines (as described in paragraph (b)(5) of this section) and if, at the time of the change, the initial missing data procedures of § 75.31 have previously been completed on a non-fuel-specific basis and the calculation of percent monitor data availability and use of the standard missing data procedures has begun in accordance with §§ 75.32 and 75.33, the owner or operator need not repeat the initial missing data procedures on a fuel-specific basis. Rather, the calculation of percent monitor data availability may continue uninterrupted, and the fuel-specific SO_2 concentration databases may be created prospectively, beginning at the time of the change. Alternatively, the databases may be created from historical CEM data, if records are available documenting the type of fuel combusted during each quality-assured monitor operating hour. If, at the time of the missing data period, there is at least one, but fewer than 720 quality-assured monitor operating hours of fuel-specific SO_2 concentration data in a particular database, use whatever data are in the database, for the purposes of the lookback periods described in § 75.33, paragraphs (b)(1)(ii)(A), (b)(2)(ii)(A), and (b)(3). If there are no quality-assured monitor operating hours of fuel-specific SO_2 concentration data in a particular database, report the fuel-specific MPC value determined under paragraph (b)(5) of this section for each hour of the missing data period.

(7) Table 1 of this section summarizes the provisions of paragraphs (b)(1) through (b)(6) of this section.

(c) *Volumetric flow rate, NO_X emission rate and NO_X concentration data.* Use the procedures in this paragraph to provide substitute NO_X and flow rate data for all affected units for which load-based ranges have been defined in accordance with section 2 of appendix C to this part. For units that do not produce electrical or thermal output (i.e., non-load-based units), use the procedures in this paragraph only to provide substitute data for volumetric flow rate, and only if operational bins have been defined for the unit, as described in section 3 of appendix C to this part. Otherwise, use the applicable missing data procedures in paragraph (d) or (e) of this section for non-load-based units. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

* * * * *

(4) * * * In addition, when non-load-based operational bins are used, the owner or operator shall substitute (as applicable) the maximum potential flow rate for any hour in the missing data period in which essential operating or parametric data are unavailable and the operational bin cannot be determined.

(5) This paragraph does not apply to non-load-based affected units using operational bins. * * *

* * * * *

(7) If there are fewer than 2,160 quality-assured monitor operating hours in a load range or operational bin, use whatever data are in the load range or bin for purposes of the lookback periods described in paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(2)(i), (c)(2)(ii)(A), (c)(3), and (c)(5) of this section.

(8) This paragraph (c) (8) does not apply to affected units using non-load-based operational bins. The owner or operator may, for units that combust more than one type of fuel, elect to implement the missing data routines in paragraphs (c)(1) through (c)(7) of this section on a fuel-specific basis. If this option is selected, the owner or operator

shall document this in the monitoring plan required under § 75.53. To implement this option, the owner or operator shall (as applicable) create and maintain a separate flow rate, NO_X emission rate, or NO_X concentration database for each type of fuel, in order to obtain the appropriate substitute data values when that fuel is combusted. Also, for the purposes of providing substitute data under paragraph (c)(4) of this section, a separate, fuel-specific maximum potential concentration (MPC), maximum potential NO_X emission rate (MER), or maximum potential flow rate (MPF) value (as applicable) shall be determined for each type of fuel combusted in the unit, in a manner consistent with section 2.1.2.1 or 2.1.4.1 of appendix A to this part. The exact methodology used to determine each fuel-specific MPC, MPF, or MER value shall be documented in the monitoring plan for the unit or stack.

(9) This paragraph (c)(9) does not apply to affected units using non-load-based operational bins. If the owner or operator elects to switch from non-fuel-specific missing data routines to fuel-specific routines (as described in paragraph (b)(8) of this section) and if, at the time of the change, the initial missing data procedures of § 75.31 have previously been completed on a non-fuel-specific basis and the calculation of percent monitor data availability and use of the standard missing data procedures has begun in accordance with §§ 75.32 and 75.33, the owner or operator need not repeat the initial missing data procedures on a fuel-specific basis. Rather, the calculation of percent monitor data availability may continue uninterrupted, and the fuel-specific NO_X or flow rate databases may be created prospectively, beginning at the time of the change. Alternatively, the databases may be created from historical CEM data, if records are available documenting the type of fuel combusted during each quality-assured monitor operating hour. If, at the time of the missing data period, there is at least one, but fewer than 2,160 quality-assured monitor operating hours of fuel-specific NO_X or flow rate data in a particular load range, use whatever data are in the load range, for the purposes of the lookback periods described in paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(2)(i), (c)(2)(ii)(A), and (c)(3) of this section. If there are no quality-assured monitor operating hours of fuel-specific NO_X or flow rate data in a particular load range (or a higher range), report the appropriate fuel-specific maximum potential value determined under paragraph (c)(2)(ii)(B)(*8*) of this section. Tables 1 and 2 follow:

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more	N ≤ 24	Average	[y] HB/HA
	N > 24	For SO_2, CO_2, and H_2O**, the greater of	
		Average	HB/HA.
		90th percentile [1]	*720 hours.
		For O_2 and H_2O[x], the lesser of	
		Average	HB/HA.
		10th percentile	*720 hours.
90 or more, but below 95	N ≤ 8	Average	[y] HB/HA
	N > 8	For SO_2, CO_2, and H_2O**, the greater of:.	
		Average	HB/HA.
		95th percentile [1]	*720 hours.
		For O_2 and H_2O[x], the lesser of:.	
		Average	HB/HA.
		5th percentile	*720 hours.
80 or more, but below 90	N > 0	For SO_2, CO_2, and H_2O**, Maximum value [1]	*720 hours.
		For O_2 and H_2O[x]: Minimum value [1]	*720 hours.
Below 80	N > 0	Maximum potential concentration [3] or % (for SO_2, CO_2, and H_2O**) *or* Minimum potential concentration or % (for O_2 and H_2O[x]).	None.

HB/HA = hour before and hour after the CEMS outage.

[*] Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years (or ozone seasons) prior to the missing data period.

[1] For units with add-on SO_2 emission controls, the owner or operator may maintain separate databases of controlled and uncontrolled emissions and provide substitute data from the appropriate database according to whether the add-on controls are documented to be operating properly during the missing data period.

[2] During unit operating hours.

[3] For units with add-on SO_2 controls, you may (if available) report the SO_2 concentration from a certified inlet monitor, in lieu of reporting the MPC.

[x] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

**Use this algorithm for moisture only when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

[y] For units with add-on SO_2 controls, if the missing data procedures of § 75.34(a)(2) are used, report the maximum SO_2 concentration in the previous 720 quality-assured monitor operating hours in the uncontrolled database in lieu of HB/HA average value, for each missing data hour in which the add-on controls are not documented to be operating properly.

TABLE 2.—MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS, NO_X CONCENTRATION CEMS AND FLOW RATE CEMS

Trigger conditions		Calculation routines		
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period (in hours)	Load ranges
95 or more	N ≤ 24	Average	2160	Yes.
	N > 24	The greater of:		
		Average	HB/HA	No.
		90th percentile	*2160	Yes.
90 or more, but below 95	N ≤ 8	Average	*2160	Yes.
	N > 8	The greater of:		
		Average	HB/HA	No.
		95th percentile	*2160	Yes.
80 or more, but below 90	N > 0	Maximum value [1]	*2160	Yes.
Below 80	N > 0	Maximum NO_X emission rate; or maximum potential NO_X concentration [3]; or maximum potential flow rate.	None	No.

HB/HA = hour before and hour after the CEMS outage.

*Quality-assured, monitor operating hours, in the corresponding load range (''load bin'') for each hour of the missing data period. May be either fuel-specific or non-fuel-specific. If there are < 2,160 hours of data in the load bin, use all data in the bin for the lookback. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years (or ozone seasons) prior to the missing data period.

[1] For units with add-on NO_X emission controls, the owner or operator may maintain separate databases of controlled and uncontrolled emissions and provide substitute data from the appropriate database according to whether the add-on controls are documented to be operating properly during the missing data period.

[2] During unit operating hours.

[3] For units with add-on NO_X controls, you may report the NO_X concentration from a certified inlet monitor (if available) in lieu of reporting the MPC.

(10) The load-based provisions of paragraphs (c)(1) through (c)(9) of this section are summarized in Table 2 of this section. The non-load-based provisions for volumetric flow rate, found in paragraphs (c)(1) through (c)(4), (c)(6), and (c)(7) of this section, are presented in Table 4 of this section.

(d) *Non-load-based NO_X emission rate and NO_X concentration data.* Use the procedures in this paragraph to provide substitute NO_X data for affected units that do not produce electrical output (in megawatts) or thermal output (in klb/hr of steam). For each hour of missing NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever the monitor data availability is equal to or greater than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period less than or equal to 24 hours, substitute, as applicable, for each missing hour, the arithmetic average of the NO_X emission rates or NO_X concentrations recorded by a monitoring system in a 2,160 hour lookback period. The lookback period may be comprised of either:

(A) The previous 2,160 quality assured monitor operating hours, or

(B) The previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins, as defined in section 3 of appendix C to this part, are used.

(ii) For a missing data period greater than 24 hours, substitute, as applicable, for each missing hour, the greater of:

(A) The 90th percentile NO_X emission rate or the 90th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used), or

(B) The arithmetic average of the hourly NO_X emission rates or NO_X concentrations recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(2) Whenever the monitor data availability is at least 90.0 percent but less than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period of less than or equal to eight hours, substitute, as applicable, the arithmetic average of the hourly NO_X emission rates or NO_X concentrations recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(ii) For a missing data period greater than eight hours, substitute, as applicable, for each missing hour, the greater of:

(A) The 95th percentile hourly flow rate or the 95th percentile NO_X emission rate or the 95th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used), or

(B) The arithmetic average of the hourly NO_X emission rates or NO_X concentrations recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(3) Whenever the monitor data availability is at least 80.0 percent but less than 90.0 percent, the owner or operator shall, by means of the automated data acquisition and handling system, substitute, as applicable, for each hour of each missing data period, the maximum hourly NO_X emission rate or the maximum hourly NO_X concentration

recorded during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(4) Whenever the monitor data availability is less than 80.0 percent, the owner or operator shall substitute, as applicable, for each hour of each missing data period, the maximum NO_X emission rate, as defined in section 2.1.2.1 of appendix A to this part, or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part. In addition, when operational bins are used, the owner or operator shall substitute (as applicable) the maximum potential NO_X emission rate or the maximum potential NO_X concentration for any hour in the missing data period in which essential operating or parametric data are unavailable and the operational bin cannot be determined.

(5) If operational bins are used and no prior quality-assured NO_X concentration data or NO_X emission rate data exist for the corresponding operational bin, the owner or operator shall substitute, as applicable, either the maximum potential NO_X emission rate or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part.

(6) If operational bins are used and there is at least one, but fewer than 2,160 quality-assured monitor operating hours of NO_X emission rate or NO_X concentration data in a particular operational bin, use whatever data are in the bin, for the purposes of the lookback periods described in paragraphs (d)(1)(i)(B), (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(2)(i), (d)(2)(ii)(A), (d)(2)(ii)(B), and (d)(3) of this section.

(7) Table 3 of this section summarizes the provisions of paragraphs (d)(1) through (d)(6) of this section.

(e) *Non-load-based volumetric flow rate data.* (1) If operational bins, as defined in section 3 of appendix C to this part, are used for a non-load-based unit, use the missing data procedures in paragraph (c) of this section to provide substitute volumetric flow rate data for the unit.

(2) If operational bins are not used for a non-load-based unit, modify the procedures in paragraph (c) of this section as follows:

(i) In paragraphs (c)(1) through (c)(3), the words ''previous 2,160 quality-assured monitor operating hours'' shall apply rather than ''previous 2,160 quality-assured monitor operating hours at the corresponding unit load range or operational bin, as determined using the procedure in appendix C to this part;''

(ii) The last sentence in paragraph (c)(4) does not apply;

(iii) Paragraphs (c)(5), (c)(7), (c)(8), and (c)(9) are not applicable; and

(iv) In paragraph (c)(6), the words, ''for either the corresponding load range (or a higher load range) or for the corresponding operational bin'' do not apply.

(3) Table 4 of this section summarizes the provisions of paragraphs (e)(1) and (e)(2) of this section. Tables 3 and 4 follow:

TABLE 3.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS AND NO_X CONCENTRATION CEMS

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [1]	Method	Lookback period (in hours)
95 or more	N≤24	Average	*2160
		The greater of:	
	N>24	Average	*2160
		90th percentile	*2160
90 or more, but below 95	N≤8	Average	*2160
	N>8	The greater of:	
		Average	*2160
		95th percentile	*2160
80 or more, but below 90	N>0	Maximum value	*2160
Below 80, or operational bin indeterminable	N>0	Maximum NO_X emission rate or maximum potential NO_X concentration.	None

* If operational bins are used, the lookback period is 2,160 quality-assured, monitor operating hours in the corresponding operational bin. If there are < 2,160 hours of data in the operational bin, use all data in the bin for the lookback. If operational bins are not used, the lookback period is the previous 2,160 quality-assured monitor operating hours. For units for which data are reported only for the ozone season, include only quality-assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years (or ozone seasons) prior to the missing data period.

[1] During unit operating hours.

TABLE 4.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR FLOW RATE CEMS

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [1]	Method	Lookback period (in hours)
95 or more	N≤24	Average	*2160
	N>24	The greater of:	
		Average	HB/HA
		90th percentile	*2160

TABLE 4.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR FLOW RATE CEMS—Continued

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [1]	Method	Lookback period (in hours)
90 or more, but below 95	N≤8	Average	*2160
	N>8	The greater of:	
		Average	HB/HA.
		95th percentile	*2160
80 or more, but below 90	N>0	Maximum value	*2160
Below 80, or operational bin indeterminable	N>0	Maximum potential flow rate	None

*If operational bins are used, the lookback period is the previous 2,160 quality-assured, monitor operating hours in the corresponding operational bin. If there are < 2,160 hours of data in the operational bin, use all data in the bin for the lookback. If operational bins are not used, the lookback period is the previous 2,160 quality-assured, monitor operating hours. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years (or ozone seasons) prior to the missing data period.

[1] During unit operating hours.

23. Section 75.34 is amended by:

a. Revising paragraphs (a) introductory text, (a)(1), (a)(2), and (d);

b. Redesignating paragraph (a)(3) as (a)(4) and adding new paragraph (a)(3);

c. In the second sentence of newly redesignated paragraph (a)(4) by removing the words ''§ 75.55(b) or'' and '', as applicable''; and

d. In paragraph (c) by revising the word '' NO_{X2}'' to read '' NO_X''.

The revisions and additions read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_X emission controls (including turbines that use dry low-NO_X (DLN) technology) shall use one of the following options for each hour in which quality-assured data from the outlet SO_2 and/or NO_X monitoring system(s) are not obtained, and shall document which option is selected in the monitoring plan required under § 75.53:

*(1) The owner or operator may use the missing data substitution procedures specified in §§ 75.31 through 75.33 to provide substitute data for any missing data hour(s) in which the add-on emission controls are documented to be operating properly, as described in the quality assurance/quality control program for the unit, required by section 1 in appendix B of this part. To provide the necessary documentation, the owner or operator shall, for each missing data period, record parametric data to verify the proper operation of the SO_2 or NO_X add-on emission controls during each hour, as described in paragraph (d) of this section. For any missing data hour(s) in which such parametric data are either not provided or, if provided, do not demonstrate that proper operation of the SO_2 or NO_X add-on emission controls has been maintained, the owner or operator shall substitute (as applicable) the maximum potential NO_X concentration (MPC) as defined in section 2.1.2.1 of appendix A to this part, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, or the maximum potential concentration for SO_2, as defined by section 2.1.1.1. Alternatively, for SO_2 or NO_X, the owner or operator may substitute, if available, the hourly SO_2 or NO_X concentration recorded by a certified inlet monitor, in lieu of the MPC. For each hour in which data from an inlet monitor are reported, the owner or operator shall use a method of determination code (MODC) of ''22'' (see Table 4a in § 75.57). In addition, under § 75.64(c), the designated representative shall submit as part of each electronic quarterly report, a certification statement, verifying the proper operation of the SO_2 or NO_X add-on emission control for each missing data period in which the missing data procedures of §§ 75.31 through 75.33 were applied; or

(2) The owner or operator may use the missing data procedures in §§ 75.31 through 75.33 for all missing data hours if:

(i) For purposes of the data lookback periods described in § 75.33, two separate historical databases are created and maintained. The first (controlled) database shall consist of quality-assured monitor operating hours of SO_2 concentration, NO_X concentration, or NO_X emission rate (as applicable) recorded downstream of the add-on emission controls, when the add-on controls are in operation (i.e., on). For a unit with more than one type of add-on controls (e.g., a unit with steam injection and SCR), the emission data for any hour(s) in which any of the add-on controls are operating shall be included in the controlled database. The second (uncontrolled) database shall consist of quality-assured monitor operating hours of SO_2 concentration, NO_X concentration, or NO_X emission rate (as applicable) recorded when none of the add-on emission controls are in operation (i.e., off). Alternatively, the uncontrolled database may consist of quality-assured monitor operating hours of data recorded by a certified monitoring system located at the control device inlet or by a certified monitoring system installed on a bypass stack (for exhaust configurations in which the flue gases are occasionally routed through an auxiliary stack, bypassing the add-on emission controls);

(ii) For each hour of each missing data period, when the appropriate mathematical algorithm from Table 1 or Table 2 in § 75.33 requires a lookback for the 90th percentile value, or the 95th percentile value, or the maximum value from the previous 720 (or 2,160) quality-assured monitor operating hours, the value is obtained from the appropriate database (i.e., from the controlled database if the add-on controls are documented to be operating properly during the hour or from the uncontrolled database if the add-on controls are either not in operation or not documented to be operating properly during the hour). To provide the necessary documentation, the owner or operator shall, for each missing data period, record parametric data, as described in paragraph (d) of this section;

(iii) For SO_2, when substitution of the average of the hour-before and hour-after values is required under §§ 75.33(b)(1)(i) or (b)(2)(i), the maximum SO_2 concentration recorded in the previous 720 quality-assured monitoring hours in the uncontrolled database is substituted in lieu of the hour-before and hour-after value, for each hour of the missing data period in

which the add-on controls are either not in operation or are not documented to be operating properly;

(iv) When the percent monitor data availability (calculated according to § 75.32) is <80 percent, the maximum potential SO_2 or NO_X concentration or the maximum potential NO_X emission rate (as applicable) is substituted for each hour of the missing data period, in accordance with § 75.33(b)(4) and (c)(4); and

(v) The designated representative, in accordance with § 75.64(c), submits as part of each electronic quarterly report a certification statement verifying the proper operation of the SO_2 or NO_X add-on emission controls during each missing data hour in which substitute data values from the first (controlled) database are reported, and (if applicable) for SO_2, during each missing data hour in which the average of the hour before and hour after values is reported.

(3) If the owner or operator elects to switch from the missing data option in paragraph (a)(1) of this section to the option in paragraph (a)(2) of this section, and if, at the time of the change, the initial missing data procedures in § 75.31 have been previously completed and use of the standard missing data procedures of § 75.33 has begun, the owner or operator need not repeat the initial missing data procedures. Rather, calculation of the percent monitor data availability may continue uninterrupted and the two databases (controlled and uncontrolled) may be created prospectively, beginning at the time of the change. Alternatively, the databases may be created from historical CEM data, if records are available documenting the operational status (i.e., on or off) of the emission controls during each quality-assured monitor operating hour. If, at the time of the missing data period, there are no quality-assured monitor operating hours of SO_2 or NO_X data in the appropriate database for the lookback periods described in § 75.33(b)(1)(ii)(A), (b)(2)(ii)(A), (b)(3), (c)(1)(i), (c)(1)(i)(A), (c)(2)(i), (c)(2)(ii)(A), and (c)(3), report the appropriate maximum potential SO_2 or NO_X concentration or the maximum potential NO_X emission rate (as applicable) for each hour of the missing data period. If there is at least one, but fewer than the requisite number of quality-assured monitor operating hours of SO_2 or NO_X data in the appropriate database for the lookback periods (i.e., either 720 or 2,160 hours, as applicable) the owner or operator shall use all available data in the database for the lookbacks.

* * * * *

(d) In order to implement the option in paragraphs (a)(1) and (a)(2) of this section, the owner or operator shall keep records of information as described in § 75.58(b)(3)(i) to verify the proper operation of all add-on SO_2 or NO_X emission controls (including dry low-NO_X technology), during all periods of SO_2 or NO_X emission missing data. The owner or operator shall document in the quality assurance/quality control (QA/QC) program required by section 1 of appendix B to this part, the parameters monitored and (as applicable) the ranges and combinations of parameters that indicate proper operation of the controls. If any of the following control methods are used: wet or dry limestone scrubbing, limestone injection, steam or water injection, selective catalytic or non-catalytic reduction (i.e., SCR or SNCR), or any other control method involving injection of water, steam, or chemical reagents into the combustion chamber or flue gas stream, at least one key parameter directly related to the control device removal efficiency shall be monitored. Examples of such key parameters include the water-to-fuel ratio, the ammonia injection rate, and the slurry flow rate. Irrespective of which specific parameter(s) are monitored, a demonstrable correlation between the parametric data and control device removal efficiency shall be established, as part of the QA/QC program. The correlation shall be based on parametric data recorded during unit operation, with the add-on controls in-service and the SO_2 or NO_X monitor (as applicable) at the control device outlet providing quality-assured data. EPA recommends that the correlation be based on a minimum of 720 hours of such data, obtained at various load levels, covering the range of operation of the unit. The correlation shall serve as the basis for determining whether to use substitute data values from the controlled database or from the uncontrolled database, during periods of missing SO_2 or NO_X data. The owner or operator shall provide the information recorded under § 75.58(b)(3) and the related QA/QC program information to the Administrator, to the EPA Regional Office, or to an auditor from EPA or from the appropriate State or local agency, upon request.

24. Section 75.35 is revised to read as follows:

§ 75.35 Missing data procedures for CO_2.

(a) The owner or operator of a unit with a CO_2 continuous emission monitoring system for determining CO_2 mass emissions in accordance with § 75.10 (or an O_2 monitor that is used to determine CO_2 concentration in accordance with appendix F to this part) shall substitute for missing CO_2 pollutant concentration data using the procedures of paragraphs (b) and (d) of this section.

(b) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by a CEMS at that location), or (when implementing these procedures for a previously certified CO_2 monitoring system) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 pollutant concentration data according to the procedures in § 75.31(b).

(c) [Reserved]

(d) Upon completion of 720 quality assured monitor operating hours using the initial missing data procedures of § 75.31(b), the owner or operator shall provide substitute data for CO_2 concentration data or substitute CO_2 data for heat input determination, as applicable, in accordance with the procedures in § 75.33(b) except that the term ''CO_2 concentration'' shall apply rather than ''SO_2 concentration,'' the term ''CO_2 pollutant concentration monitor'' or ''CO_2 diluent monitor'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration.''

25. Section 75.36 is amended by:

a. Revising the section heading;

b. In paragraph (a) by adding the word ''rate'' after the words ''hourly heat input'' in the first sentence, by adding the word ''rate'' after the words ''heat input'' in the second and third sentences, removing the words ''On and after April 1, 2000,'' in the third sentence and capitalizing ''When'' to begin that sentence, and by removing the last sentence;

c. Revising paragraph (b);

d. Removing and reserving paragraph (c); and

e. In paragraph (d) by adding the word ''rate'' after each occurrence of the word ''input''.

The revisions and additions read as follows:

§ 75.36 Missing data procedures for heat input rate determinations.

* * * * *

(b) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by a CEMS at that location), or (when implementing these procedures for a previously certified CO_2 or O_2 monitor) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 or O_2 data, as applicable, for the calculation of heat input (under section 5.2 of appendix F to this part) according to § 75.31(b).

* * * * *

26. Section 75.37 is amended by:

a. In paragraph (a) by revising the words ''On and after April 1, 2000, the'' to read ''The'' in the first sentence and by removing the second sentence;

b. Revising paragraphs (c) and (d)(2)(i); and

c. In paragraph (d) introductory text by removing the words ''of the moisture monitoring system''.

The revisions and additions read as follows:

§ 75.37 Missing data procedures for moisture.

* * * * *

(c) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by a moisture monitoring system at that location), the owner or operator shall provide substitute data for moisture according to § 75.31(b).

(d) * * *

(2) * * *

(i) Provided that none of the following equations is used to determine SO_2 emissions, CO_2 emissions or heat input: Equation F–2, F–14b, F–16, F–17, or F–18 in appendix F to this part, or Equation 19–5 or 19–9 in Method 19 in appendix A to part 60 of this chapter, use the missing data procedures in § 75.33(b), except that the term ''moisture percentage'' shall apply rather than ''SO_2 concentration,'' the term ''moisture monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration;'' or

* * * * *

27. Section 75.41 is amended by adding the words ''(Eq. 22)'' immediately before ''where,'' in paragraph (b)(2)(v)(B) and by revising Equation 27 in paragraph (c)(2)(ii) to read as follows:

§ 75.41 Precision criteria.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

$$r = \frac{\sum e_p e_v - \left(\sum e_p\right)\left(\sum e_v\right)/n}{\left(\left[\sum e_p^2 - \left(\sum e_p\right)^{2/n}\right]\left[\sum e_v^2 - \left(\sum e_v\right)^{2/n}\right]\right)^{(1/2)}} \qquad \text{(Eq. 27)}$$

28. Section 75.53 is amended by:

a. Removing and reserving paragraphs (c) and (d);

b. Revising paragraphs (a)(1), (e)(1)(viii), (f)(1)(i)(F), and (f)(2)(i)(H);

c. In paragraph (b) by adding the words '', by the applicable deadline specified in § 75.62 or elsewhere in this part'' prior to the period at the end of the paragraph;

d. In paragraph (e)(1)(i)(D) by adding the words ''emergency/startup'' after the words ''primary/secondary'';

e. In paragraph (e)(1)(i)(E) by adding the words ''primary/secondary controls indicator;'' after the words ''(if applicable);'';

f. In paragraph (e)(1)(ix) by revising the words ''Part 75 monitoring'' to read ''Monitoring'', adding the words ''ARP/Subpart H facility ORISPL number,'' after the words ''boiler identification number,'', and adding the words ''(or equivalent)'' after the words ''reporting indicator'';

g. In paragraph (f)(2)(i)(F) by adding the word ''rate'' after the word ''input'' and the word ''emission'' after the word '' NO_X'';

h. Adding a sentence to the end of paragraph (f)(5)(i); and

i. Adding paragraphs (f)(5)(i)(A) through (H).

The revisions and additions read as follows:

§ 75.53 Monitoring plan.

(a) * * *

(1) The owner or operator shall meet the requirements of paragraphs (a), (b), (e), and (f) of this section.

* * * * *

(e) * * *

(1) * * *

(viii) Stack exit height (ft) above ground level and ground level elevation above sea level.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) The method used to demonstrate that the unit qualifies for monthly GCV sampling or daily fuel sampling for sulfur content, if applicable.

* * * * *

(2) * * *

(i) * * *

(H) To document the unit qualifies as a peaking unit, current calendar year or ozone season, capacity factor data as specified in the definition of peaking unit in § 72.2 of this chapter, and an indication of whether the data are actual, projected, or operating data.

* * * * *

(5) * * *

(i) * * * The following items should be included:

(A) Current calendar year of application;

(B) Type of qualification;

(C) Years one, two, and three;

(D) Annual or ozone season measured or projected NO_X mass emissions for years one, two, and three;

(E) Annual or ozone season NO_X mass calculated from emission factors for years one, two, and three;

(F) Annual measured or projected SO_2 mass emissions for years one, two, and three;

(G) Annual SO_2 mass calculated from emission factors for years one, two, and three; and

(H) Annual or ozone season operating hours for years one, two, and three.

* * * * *

§ 75.54 [Reserved]

29. Section 75.54 is removed and reserved.

§ 75.55 [Reserved]

30. Section 75.55 is removed and reserved.

§ 75.56 [Reserved]

31. Section 75.56 is removed and reserved.

32. Section 75.57 is amended by:

a. Revising the introductory paragraph;

b. In paragraph (a)(3) by removing the words ''§ 75.55 or'' and ''as applicable,'';

c. In paragraph (a)(4) by removing both occurrences of the words ''§ 75.56 or'';

d. Revising Table 4a at the end of paragraph (c)(4);

e. Revising paragraph (d)(6); and

f. Revising the first sentence of paragraph (d)(7).

The revisions read as follows:

§ 75.57 General recordkeeping provisions.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

* * * * *

(c) * * *

(4) * * *

TABLE 4A.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified backup emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2 or its allowable alternatives under appendix A to part 60 of this chapter. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO2 and/or NO_X emission controls: SO2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, O_2 concentrations, NO_X concentrations, flow rates, moisture percentages or NO_X emission rates for the hour before and the hour following a missing data period.
7	Average of the hourly SO_2 concentration, CO_2 concentration, O_2 concentration, NO_X concentration, moisture percentage, flow rate, or NO_X emission rate for the hour before and the hour following a missing data period, using initial missing data procedures.
8	90th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 10th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
9	95th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 5th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
10	Maximum hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or minimum hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
11	Average of hourly flow rates, NO_X concentrations or NO_X emission rates in corresponding load range (or, if applicable, a higher load range), for the applicable lookback period, using the initial missing data procedures.
12	Maximum potential concentration of SO_2, maximum potential concentration of CO_2, maximum potential concentration of NO_X maximum potential flow rate, maximum potential NO_X emission rate, maximum potential moisture percentage, minimum potential O_2 concentration or minimum potential moisture percentage, as determined using section 2.1 of appendix A to this part (moisture missing data algorithm depends on which equations are used for emissions and heat input).
13	[Reserved].
14	Diluent cap value (if the cap is replacing a CO_2 measurement, use 5.0 percent for boilers and 1.0 percent for turbines; if it is replacing an O_2 measurement, use 14.0 percent for boilers and 19.0 percent for turbines).
15	[Reserved].
16	SO_2 concentration value of 2.0 ppm during hours when only ''very low sulfur fuel'', as defined in § 72.2 of this chapter, is combusted.
17	Like-kind replacement non-redundant backup analyzer.
19	200 percent of the MPC; default high range value.
20	200 percent of the full-scale range setting (full-scale exceedance of high range).
21	Negative hourly SO_2 concentration, NO_X concentration, percent moisture, or NO_X emission rate replaced with zero.
22	Hourly average SO_2 or NO_X concentration, measured by a certified monitor at the control device inlet (units with add-on emission controls only).
23	Maximum potential SO_2 concentration, NO_X concentration or NO_X emission rate or flow rate, for an hour in which flue gases are discharged through an unmonitored bypass stack.
25	Maximum potential NO_X emission rate (MER). (Use only when a NO_X concentration full-scale exceedance occurs and the diluent monitor is unavailable.)
54	Other quality assured methodologies approved through petition. These hours are included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.
55	Other substitute data approved through petition. These hours are not included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.

(d) * * *

(6) Hourly average NO_X emission rate (for NO_X-diluent monitoring systems only, in units of lb/mmBtu, rounded to the nearest thousandth);

(7) Hourly average NO_X emission rate (for NO_X-diluent monitoring systems only, in units of lb/mmBtu, rounded to the nearest thousandth), adjusted for bias if bias adjustment factor is required, as provided in § 75.24(d). * * *

* * * * *

33. Section 75.58 is amended by:

a. Revising the introductory paragraph;

b. In paragraphs (b)(1)(i) and (c) by removing the words ''§ 75.54(c) or'';

c. In paragraph (b)(1)(xi) and (b)(2)(vii) by removing the words ''Codes 1–15 in Table 4 of § 75.54 or'';

d. Revising paragraph (b)(3);

e. Adding a period to the end of paragraph (c)(7)(ii);

f. In paragraph (d) by removing the words ''paragraph 75.54(d) or'';

g. In paragraph (e)(1) by removing the words ''§§ 75.54(c)(1) and (c)(3) or''; and

h. In paragraph (f) by removing the words ''§§ 75.54(b) through (e) or''.

The revisions read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

* * * * *

(b) * * *

(3) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), the owner or operator shall record:

(i) Parametric data which demonstrate, for each hour of missing SO_2 or NO_X emission data, the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site and shall be submitted, upon request, to the Administrator, EPA Regional office, State, or local agency;

(ii) A flag indicating, for each hour of missing SO_2 or NO_X emission data, either that the add-on emission controls are operating properly, as described in the quality assurance/quality control program, or that the add-on emission controls are not operating properly; and

(iii) For the purposes of creating the controlled and uncontrolled databases described under § 75.34(a)(2), a flag indicating whether the add-on emission controls are operating (on) or not operating (off) during each unit operating hour.

* * * * *

34. Section 75.59 is amended by:

a. Revising the introductory paragraph;

b. Revising paragraphs (a)(1)(vii), (a)(7)(ii)(P) and (a)(7)(iii)(F);

c. In the second sentence of paragraph (a)(7) by adding the words ''of this section'' after the words ''through (a)(7)(vi)'';

d. In paragraph (a)(10)(i)(E) by revising the reference to ''(a)(7)(iii)(A)'' to read ''(a)(7)(iii)'';

e. In paragraph (b)(2)(v) by adding the word ''level'' after the word ''high'';

f. In paragraphs (b)(4)(ii)(K) and (b)(5)(i)(N) by removing the word ''and'' after the semicolon;

g. In paragraph (b)(4)(ii)(L) by removing the period and adding in its place ''; and'';

h. In paragraph (b)(5)(i)(O) by removing the period and adding in its place a semicolon;

i. Adding paragraphs (b)(4)(ii)(M), (b)(5)(i)(P), and (b)(5)(i)(Q);

j. In paragraph (c)(1) by removing the words ''§ 75.55(b) or'';

k. In paragraph (d)(1) by revising the word ''under'' to read ''using the procedures of'';

l. Adding the word ''and'' at the end of paragraph (d)(1)(xi);

m. Removing paragraphs (d)(1)(xiii) through (d)(1)(xvi);

n. Redesignating existing paragraph (d)(2) as (d)(3) and adding a new paragraph (d)(2); and

o. In newly designated paragraph (d)(3)(x) by removing the words ''and (*3*)''.

The revisions and additions read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

(a) * * *

(1) * * *

(vii) Reference signal or calibration gas level;

* * * * *

(7) * * *

(ii) * * *

(P) Average stack flow rate, adjusted, if applicable, for wall effects (scfh, wet basis);

* * * * *

(iii) * * *

(F) Average velocity differential pressure at traverse point (inches of H_2O) or the average of the square roots of the velocity differential pressures at the traverse point ((inches of $H_2O)^{1/2}$);

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(M) Number of hours excluded due to co-firing.

* * * * *

(5) * * *

(i) * * *

(P) Flag to indicate highest NO_X emission rate for unit-specific, fuel-specific NO_X emission rate testing; and

(Q) Adjusted NO_X default rate (for low mass emission unit default testing).

* * * * *

(d) * * *

(2) For each single-load or four-load appendix E test, record the following:

(i) The three-run average NO_X emission rate for each load level;

(ii) An indicator that the average NO_X emission rate is the highest NO_X average emission rate recorded at any load level of the test (if appropriate);

(iii) The default NO_X emission rate (highest three run average NO_X emission rate at any load level, multiplied by 1.15, if appropriate;

(iv) An indicator that the add-on NO_X emission controls were operating or not operating during each run of the test; and

(v) Parameter data indicating the use and efficacy of control equipment during the test.

* * * * *

35. Section 75.60 is amended by adding paragraph (b)(7) to read as follows:

§ 75.60 General provisions.

* * * * *

(b) * * *

(7) *Routine appendix E retest reports.* If requested by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy report within 45 days after completing a required periodic retest according to section 2.2 of appendix E to this part, or within 15 days of receiving the request, whichever is later. The designated representative shall report the hardcopy information required by § 75.59(b)(5) to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the hardcopy report.

* * * * *

36. Section 75.61 is amended by:

a. In paragraph (a)(1) by removing the words ''and except for testing only of the data acquisition and handling system'' from the end of that paragraph, by adding a period to the end of the first sentence, and by adding two new sentences to the end of the paragraph;

b. In paragraph (a)(1)(i) by revising the number ''45'' to read ''21'';

c. Revising paragraphs (a)(1)(ii) and (a)(1)(iii);

d. In paragraph (a)(1)(iv) by revising both references to ''(a)(1)'' to read ''(a)(1)(ii)'', by adding the words ''or other retests'' to the end of the first sentence, and by adding the words ''(or other retests)'' after the words ''recertification tests'' in the second sentence;

e. In the first sentence of paragraph (a)(2) introductory text by adding the words '', or will become affected,'' after the words ''commercial operation'';

f. In paragraph (a)(4) by removing ''(a)'' after the second and third occurrences of ''§ 75.4'';

g. Revising the first sentence of paragraph (a)(5) introductory text;

h. In paragraph (a)(5)(ii) by adding the words '', appendix E retest, or low mass

emissions unit retest'' after the words ''relative accuracy test''; and

i. Revising paragraph (a)(6).

The revisions and additions read as follows:

§ 75.61 Notifications.

(a) * * *

(1) * * * The owner or operator shall also provide written notification of testing performed under § 75.19(c)(1)(iv)(A) to establish fuel and unit-specific NO_X emission rates for low mass emissions units. Such notifications are not required, however, for initial certifications and recertifications of excepted monitoring systems under appendix D to this part.

* * * * *

(ii) *Notification of certification retesting, recertification testing, and retesting of low mass emissions units.* For retesting required following a loss of certification under § 75.20(a)(5), for recertification testing required under § 75.20(b), or for retesting required under § 75.19(c)(1)(iv)(D), notice of the date of any required RATA testing, any required retesting under section 2.3 in appendix E to this part, or any required retesting to determine new fuel and unit-specific NO_X emission rates for low mass emissions units shall be submitted either in writing or by telephone at least 21 days prior to the first scheduled day of testing. Testing may be performed on a date other than that already provided in a notice under this paragraph (a)(1)(ii) as long as notice of the new date is provided by telephone or other means at least 7 days prior to the original scheduled test date or the revised test date, whichever is earlier.

(iii) *Repeat of testing without notice.* Notwithstanding the above notice requirements, the owner or operator may elect to repeat a certification or recertification test or low mass emissions unit retest immediately, without advance notification, whenever the owner or operator has determined during the certification or recertification testing or low mass emissions unit retesting that a test was failed or must be aborted, or that a second test is necessary in order to attain a reduced relative accuracy test frequency.

* * * * *

(5) *Periodic relative accuracy test audits, appendix E retests, and low mass emissions unit retests.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under section 2.3.1 of appendix B to this part, of periodic retesting performed under section 2.2 of appendix E to this part, and of periodic retesting of low mass emissions units performed under § 75.19(c)(1)(iv)(D), no later than 21 days prior to the first scheduled day of testing. * * *

* * * * *

(6) *Notice of combustion of emergency fuel under appendix D or E.* The designated representative of an oil-fired unit or gas-fired unit using appendix D or E of this part shall, for each calendar quarter in which emergency fuel is combusted, provide notice of the combustion of the emergency fuel in the cover letter (or electronic equivalent) which transmits the next quarterly report submitted under § 75.64. The notice shall specify the exact dates and hours during which the emergency fuel was combusted.

* * * * *

37. Section 75.62 is amended by:

a. Revising paragraph (a)(1); and

b. In the third sentence of paragraph (a)(2) by adding the words ''certification and'' after the words ''with any'' and the words ''certification or'' after the words ''associated with the''.

The revisions and additions read as follows:

§ 75.62 Monitoring plan submittals.

(a) * * *

(1) *Electronic.* Using the format specified in paragraph (c) of this section, the designated representative for an affected unit shall submit a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (a)(2) of this section) to the Administrator, by a method specified by the Administrator, as follows: no later than 45 days prior to the initial certification tests; at the time of each certification or recertification application submission; in each electronic quarterly report; and whenever an update of the electronic monitoring plan information is required, either under § 75.53(b) or elsewhere in this part (for such required updates, submit the updated electronic monitoring plan within 30 days of the event with which the monitoring plan change is associated, unless otherwise specified in this part).

* * * * *

38. Section 75.63 is amended by:

a. Revising paragraphs (a)(1)(i) and (ii), and removing paragraph (a)(1)(iii);

b. In paragraph (a)(2)(i) by adding the words ''under § 75.20(b)'' after the words ''recertification tests'' and the words ''of this section'' after the words ''paragraph (b)(1)'';

c. Revising the first and second sentences of paragraph (a)(2)(ii);

d. In paragraph (a)(2)(iii) by adding the words ''rather than certification testing'' after the words ''are required'';

e. Revising paragraph (b)(1)(i);

f. In paragraph (b)(1)(ii) by removing the words ''§ 75.56 or'' and ''as applicable,''; and

g. Revising the first sentence of paragraphs (b)(2)(i) and (c).

The revisions and additions read as follows:

§ 75.63 Initial certification or recertification application.

(a) * * *

(1) * * *

(i) For CEM systems or excepted monitoring systems under appendix D or E to this part, within 45 days after completing all initial certification tests, submit:

(A) To the Administrator, the electronic information required by paragraph (b)(1) of this section and a hardcopy certification application form (EPA form 7610–14). The results of the certification tests shall also be included in the appropriate electronic quarterly report submittal under § 75.64. Except for subpart E applications for alternative monitoring systems or unless specifically requested by the Administrator, do not submit a hardcopy of the test data and results to the Administrator.

(B) To the applicable EPA Regional Office and the appropriate State and/or local air pollution control agency, the hardcopy information required by paragraph (b)(2) of this section.

(ii) For units for which the owner or operator is applying for certification approval of the optional excepted methodology under § 75.19 for low mass emissions units, submit, no later than 45 days prior to commencing use of the methodology:

(A) To the Administrator, the electronic information required by paragraph (b)(1)(i) of this section, and a hardcopy certification application form (EPA form 7610–14); and

(B) To the applicable EPA Regional Office and appropriate State and/or local air pollution control agency, the hardcopy information required by § 75.19(a)(2), the hardcopy results of any appendix E (of this part) tests or any CEMS data analysis used to derive a fuel and unit specific default NO_X emission rate, and the hardcopy information in paragraphs (b)(2)(i), (iii), and (iv) of this section.

(2) * * *

(ii) Within 45 days after completing all recertification tests under § 75.20(b), submit the hardcopy information required by paragraph (b)(2) of this section to the applicable EPA Regional

Office and the appropriate State and/or local air pollution control agency. The applicable EPA Regional Office or appropriate State or local air pollution control agency may waive the requirement to provide hardcopy recertification test data and results.
* * *

* * * * *

(b) * * *

(1) * * *

(i) A complete, up-to-date version of the electronic portion of the monitoring plan, according to § 75.53(e) and (f), in the format specified in § 75.62(c).

* * * * *

(2) * * *

(i) Any changed portions of the hardcopy monitoring plan information required under § 75.53(e) and (f). * * *

* * * * *

(c) *Format.* The electronic portion of each certification or recertification application shall be submitted in a format to be specified by the Administrator and by a method specified by the Administrator. * * *

39. Section 75.64 is amended by:

a. Revising the first and third sentences of paragraph (a) introductory text and revising paragraph (a)(2) introductory text;

b. In paragraph (a)(2)(iii) by removing the words ''§ 75.54(f) or'';

c. In paragraph (a)(2)(iv) by removing the words ''§ 75.55(b)(3) or'';

d. In paragraph (a)(2)(vi) by removing the words ''§ 75.54(g) or'';

e. In paragraph (a)(2)(vii) by removing the words ''§ 75.56 or'';

f. In paragraph (a)(2)(viii) by removing the words ''§ 75.56(a)(5)(vii), § 75.56(a)(5)(ix),'';

g. In paragraph (a)(2)(xi) by removing the words ''§ 75.56(a)(7) or'';

h. In paragraph (a)(4) by removing the words ''hundredth prior to April 1, 2000 and to the nearest'' and the words ''on and after April 1, 2000'';

i. Removing and reserving paragraphs (a)(2)(v), (a)(8), and (e);

j. In paragraph (d) by removing the words ''or hardcopy''; and

k. In paragraph (f) by removing the words ''modem and''.

The revisions read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the earlier of the calendar quarter corresponding to the date of provisional certification or the calendar quarter corresponding to the relevant deadline for initial certification in § 75.4(a), (b), or (c). * * * For an affected unit subject to § 75.4(d) that is shutdown on the relevant compliance date in § 75.4(a) or has been placed in long-term cold storage, the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences commercial operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced commercial operation of the unit). * * *

* * * * *

(2) The information and hourly data required in § 75.53 and §§ 75.57 through 75.59, excluding the following:

* * * * *

§ 75.65 [Amended].

40. Section 75.65 is amended by removing the words ''§ 75.54(f) or'' and '', as applicable,''.

§ 75.66 [Amended]

41. Section 75.66 is amended by:

a. In paragraph (e) by removing the words ''§ 75.55(b) or'' and '', as applicable,''; and

b. Removing and reserving paragraph (i).

42. Section 75.70 is amended by:

a. Adding a hyphen to the term ''non-affected'' in paragraph (a)(1);

b. In paragraph (d)(1) by adding the words ''in § 75.20'' after the words ''recertification procedures'';

c. Revising paragraphs (e), (f) introductory text, and (f)(1) introductory text;

d. In paragraphs (f)(1)(i), (ii), and (iii) by adding a comma after the word ''valid'' and revising the words ''quality assured'' to read ''quality-assured'';

e. In paragraphs (f)(1)(ii) and (iii) by removing the word ''or'' from the end of each paragraph;

f. In paragraph (f)(1)(iii) by adding the word ''rate'' before the word ''data'', revising the word ''mmBtu'' to read ''mmBtu/hr'', and revising the word ''accepted'' to read ''excepted'';

g. In paragraph (f)(1)(iv) by revising the words ''volumetric flow monitor, and without a diluent monitor'' to read ''flow monitor'', by adding a comma after the reference to ''§ 75.32'', and by removing the period and adding ''; or'' to the end of the paragraph;

h. Adding new paragraph (f)(1)(v);

i. In paragraph (g)(1) by adding the word ''rate'' after the words ''and heat input'';

j. In paragraph (g)(2) by revising the words ''of the unit under section 2.1'' to read '', as defined in section 2.1.4.1''; and

k. Revising paragraph (g)(6).

The revisions and additions read as follows:

§ 75.70 NO_X mass emissions provisions.

* * * * *

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for NO_X mass emissions, the owner or operator shall meet the applicable quality assurance and quality control requirements in § 75.21, appendix B to this part, and § 75.74(c) for the NO_X-diluent continuous emission monitoring systems, flow monitoring systems, NO_X concentration monitoring systems, moisture monitoring systems, and diluent monitors required under § 75.71. Units using the low mass emissions excepted methodology under § 75.19 shall meet the applicable quality assurance requirements of that section, except as otherwise provided in § 75.74(c). Units using excepted monitoring methods under appendices D and E to this part shall meet the applicable quality assurance requirements of those appendices.

(f) *Missing data procedures.* Except as provided in § 75.74(c)(7), the owner or operator shall provide substitute data from monitoring systems required under § 75.71 for each affected unit as follows:

(1) For an owner or operator using a continuous emissions monitoring system, substitute for missing data in accordance with the applicable missing data procedures in §§ 75.31 through 75.37 whenever the unit combusts fuel and:

* * * * *

(v) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system or an approved alternative monitoring method under subpart E of this part. This requirement does not apply when a default percent moisture value, as provided in §§ 75.11(b) or 75.12(b), is used to account for the hourly moisture content of the stack gas.

* * * * *

(g) * * *

(6) For any unit using continuous emissions monitors, the conditional data validation procedures in § 75.20(b)(3)(ii) through (b)(3)(ix).

* * * * *

43. Section 75.71 is amended by:

a. In paragraph (a)(1) by adding the word ''rate'' after the words ''heat input'' and by removing the hyphen after each occurrence of the words ''O_2'' and ''CO_2'';

b. In the second sentence of paragraph (a)(2) by adding the word ''rate'' after

the words ''measure heat input'', by removing the word ''use'' after the words ''if applicable,'', and by adding the words ''may be used'' after the words ''appendix D to this part'';

c. In paragraph (b)(1) by revising ''i.e.'' to read ''e.g.'' and by adding the words ''or to calculate the heat input rate'' before the words '', the owner'';

d. In paragraph (b)(3) by adding the word ''rate'' after the word ''input'' and by adding a comma after the word ''maintain'';

e. In the first and second sentences of paragraph (c)(2) by adding the word ''rate'' after the words ''heat input''; and

f. In paragraph (d)(2) by removing the words ''or, if applicable, paragraph (e) of this section'', by revising the reference in ''paragraph (c)'' to read ''paragraph (c)(1) or (c)(2)'', and by adding two new sentences to the end of the paragraph.

The revisions and additions read as follows:

§ 75.71 Specific provisions for monitoring NO_X and heat input for the purpose of calculating NO_X mass emissions.

* * * * *

(d) * * *

(2) * * * If the required CEMS are not installed and certified by that date, the owner or operator shall report hourly NO_X mass emissions as the product of the maximum potential NO_X emission rate (MER) and the maximum hourly heat input of the unit (as defined in § 72.2 of this chapter), starting with the first unit operating hour after the deadline and continuing until the CEMS are provisionally certified. For each unit operating hour in which the MER is used for NO_X mass reporting, the MER shall be specific to the type of fuel being combusted in the unit.

* * * * *

44. Section 75.72 is amended by:

a. Revising the first sentence of the introductory paragraph to the section;

b. Revising paragraphs (a)(1) introductory text and (a)(1)(i);

c. Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and adding a new paragraph (a)(1)(ii);

d. In the newly redesignated paragraph (a)(1)(iii)(A) by adding the word ''rate'' after the words ''heat input'' and by adding the words ''and a diluent monitor'' after the word ''system'' in newly redesignated paragraph (a)(1)(iii)(B);

e. In paragraph (a)(2) introductory text by adding the words '', for purposes of heat input determination,'' after the words ''from each unit and'';

f. In paragraph (a)(2)(ii)(A) by adding the word ''rate'' after the words ''heat input'';

g. In paragraph (b)(1) introductory text by removing the semicolon and adding the words '', for purposes of heat input determination,'' at the end of the paragraph;

h. In paragraph (b)(2)(ii)(B) by adding the word ''rate'' after the words ''heat input'' in the first sentence;

i. In paragraph (b)(2)(iii) by adding the words '', in accordance with paragraph (a) of this section'' after the word ''purposes'';

j. Revising paragraph (c);

k. Revising paragraph (d);

l. In paragraph (e) introductory text by revising the first sentence, adding a new second sentence, and revising the words ''appendix F of '' to read ''appendix F to'' in the third sentence;

m. In paragraph (e)(1) introductory text by revising the second sentence and adding a new third sentence;

n. In paragraph (e)(1)(i) by adding the word ''rate'' after ''heat input'' and by revising the reference to ''§ 75.16(e)(5)'' to read ''§ 75.16(e)(3)'';

o. In paragraph (e)(2) by adding the word ''rate'' after the words ''heat input'' in the first sentence; and

p. In paragraph (g) by removing the words ''the owner or operator should'' and by revising the reference to ''§ 75.16(e)(5)'' to read ''§ 75.16(e)(3)''.

The revisions and additions read as follows:

§ 75.72 Determination of NO_X mass emissions.

Except as provided in paragraphs (e) and (f) of this section, the owner or operator of an affected unit shall calculate hourly NO_X mass emissions (in lbs) by multiplying the hourly NO_X emission rate (in lbs/mmBtu) by the hourly heat input rate (in mmBtu/hr) and the unit or stack operating time (as defined in § 72.2). * * *

(a) * * *

(1) Install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system and a flow monitoring system and diluent monitor in the common stack, record the combined NO_X mass emissions for the units exhausting to the common stack, and, for the purposes of determining the hourly unit heat input rates, either:

(i) Apportion the common stack heat input rate to the individual units according to the procedures in § 75.16(e)(3);

(ii) Install, certify, operate, and maintain a flow monitoring system and diluent monitor in the duct to the common stack from each unit; or

* * * * *

(c) *Unit with a main stack and a bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack to avoid the installed NO_X-diluent continuous emissions monitoring system or NO_X concentration monitoring system, the owner and operator shall either:

(1) Install, certify, operate, and maintain separate NO_X-diluent continuous emissions monitoring systems and flow monitoring systems on the main stack and the bypass stack and calculate NO_X mass emissions for the unit as the sum of the NO_X mass emissions measured at the two stacks;

(2) Monitor NO_X mass emissions at the main stack using a NO_X-diluent CEMS and a flow monitoring system and measure NO_X mass emissions at the bypass stack using the reference methods in § 75.22(b) for NO_X concentration, flow rate, and diluent gas concentration, or NO_X concentration and flow rate, and calculate NO_X mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain a NO_X-diluent CEMS and a flow monitoring system only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, since only the main stack is monitored. For each unit operating hour in which the bypass stack is used, report NO_X mass emissions as follows. If the unit heat input is determined using a flow monitor and a diluent monitor, report NO_X mass emissions using the maximum potential NO_X emission rate, the maximum potential flow rate, and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable). The maximum potential NO_X emission rate shall be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(c)(8)). If the unit heat input is determined using a fuel flowmeter, in accordance with appendix D to this part, report NO_X mass emissions as the product of the fuel-specific maximum potential NO_X emission rate and the actual measured hourly heat input rate.

(d) *Unit with multiple stack or duct configuration.* When the flue gases from an affected unit discharge to the atmosphere through more than one stack, or when the flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain a NO_X-diluent continuous

emission monitoring system and a flow monitoring system in each of the multiple stacks and determine NO_X mass emissions from the affected unit as the sum of the NO_X mass emissions recorded for each stack. If another unit also exhausts flue gases into one of the monitored stacks, the owner or operator shall comply with the applicable requirements of paragraphs (a) and (b) of this section, in order to properly determine the NO_X mass emissions from the units using that stack;

(2) Install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system and a flow monitoring system in each of the ducts that feed into the stack, and determine NO_X mass emissions from the affected unit using the sum of the NO_X mass emissions measured at each duct; or

(3) If the unit is eligible to use the procedures in appendix D to this part and if the conditions and restrictions of § 75.17(c)(2) are fully met, install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system in one of the ducts feeding into the stack or in one of the multiple stacks, (as applicable) in accordance with § 75.17(c)(2), and use the procedures in appendix D to this part to determine heat input rate for the unit.

(e) *Units using a NO_X concentration monitoring system and a flow monitoring system to determine NO_X mass.* The owner or operator may use a NO_X concentration monitoring system and a flow monitoring system to determine NO_X mass emissions for the cases described in paragraphs (a) through (c) of this section and in paragraph (d)(1) or paragraph (d)(2) of this section (in place of a NO_X-diluent continuous emissions monitoring system and a flow monitoring system). However, this option may not be used for the case described in paragraph (d)(3) of this section. * * *

(1) * * * In addition, the owner or operator must provide heat input rate values for each unit utilizing a common stack. The owner or operator may either:

* * * * *

45. Section 75.73 is amended by:

a. In the second sentence of paragraph (a) by adding the word ''compliance'' before the word ''deadline'', and by revising the reference to ''§ 75.70'' to read ''§ 75.70(b)'';

b. Revising paragraph (a)(6) introductory text;

c. Adding new paragraphs (a)(8), (a)(9), (d)(6), (f)(1)(vii), and (f)(1)(viii);

d. Revising all of paragraph (c)(3) except for the heading and the first sentence;

e. Revising paragraph (e)(1); and

f. In paragraph (e)(2) by adding the words ''certification or'' before the words ''recertification application'' in the third sentence, and by adding a new sentence to the end of the paragraph.

The revisions and additions read as follows:

§ 75.73 Recordkeeping and reporting.

(a) * * *

(6) *Specific heat input record provisions for gas-fired or oil-fired units using the procedures in appendix D to this part.* In lieu of the information required in § 75.57(c)(2), the owner or operator shall record the information in § 75.58(c) for each affected gas-fired or oil-fired unit and each non-affected gas- or oil-fired unit under § 75.72(b)(2)(ii) for which the owner or operator is using the procedures in appendix D to this part for estimating heat input.

* * * * *

(8) Total NO_X mass emissions for the hour.

(9) Formulas from monitoring plan for total NO_X mass.

* * * * *

(c) * * *

(3) * * * In addition, to the extent applicable, each monitoring plan shall contain the information in § 75.53, paragraphs (f)(1)(i), (f)(2)(i), and (f)(4) in electronic format and the information in § 75.53, paragraphs (f)(1)(ii) and (f)(2)(ii) in hardcopy format. For units using the low mass emissions excepted methodology under § 75.19, the monitoring plan shall include the additional information in § 75.53, paragraphs (f)(5)(i) and (f)(5)(ii). The monitoring plan also shall identify, in electronic format, the reporting schedule for the affected unit (ozone season or quarterly), the beginning and end dates for the reporting schedule, seasonal controls indicator, ozone season fuel switching flag, and whether year-round reporting for the unit is required by a State or local agency.

(d) * * *

(6) *Routine appendix E retest reports.* If requested by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy report within 45 days after completing a required periodic retest according to section 2.2 of appendix E to this part, or within 15 days of receiving the request, whichever is later. The designated representative shall report the hardcopy information required by § 75.59(b)(5) to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the hardcopy report.

(e) * * *

(1) *Electronic submission.* The designated representative for an affected unit shall submit to the Administrator, by a method specified by the Administrator, a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (e)(2) of this section) for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii) to the permitting authority, no later than 45 days prior to the initial certification test; at the time of a certification or recertification application submission; and whenever an update of the electronic monitoring plan is required, either under § 75.53 or elsewhere in this part. Submit the updated electronic monitoring plan within 30 days of the event with which the monitoring plan is associated, unless otherwise specified in this part.

(2) * * * Electronic submittal of all monitoring plan information, including hardcopy portions, is permissible provided that a paper copy of the hardcopy portions can be furnished upon request.

(f) * * *

(1) * * *

(vii) Reporting period heat input.

(viii) New reporting frequency and begin date of the new reporting frequency.

* * * * *

46. Section 75.74 is amended by:

a. Revising paragraph (c)(2)(i)(D)(*1*);

b. Adding a new second sentence to paragraph (c)(2)(ii);

c. In the third sentence of paragraph (c)(2)(ii)(C) by revising the words ''in every period of five consecutive calendar'' to read ''every five'';

d. Revising paragraph (c)(2)(ii)(H)(*1*);

e. Revising the second sentence of paragraph (c)(3)(iii);

f. In the second sentence of paragraph (c)(3)(iv) by adding the words ''the cumulative'' after the word ''only'' and by revising the words ''included when determining'' to read ''used to determine'';

g. In paragraph (c)(3)(v) by adding a new second sentence;

h. In paragraph (c)(3)(vi)(B) by removing the quotation marks around the words ''probationary calibration error test'' in the first sentence, by revising the reference to ''§ 75.20(b)(3)'' to read ''§ 75.20(b)(3)(ii)'' in the first sentence, and by adding the words ''(subject to the restrictions in paragraph (c)(3)(xii) of this section)'' after the words ''§ 75.20(b)(3)'' in the third sentence;

i. In paragraph (c)(3)(viii) by adding the word ''cumulative'' after the number ''168'';

j. In paragraph (c)(3)(x) by adding the words '', if applicable,'' after the words ''§ 75.20(b)(3) and'';

k. In paragraph (c)(3)(xi) by adding a comma after each occurrence of the word ''diagnostic'', by revising the words ''§ 75.31 or § 75.33'' in the third sentence to read ''§ 75.31, § 75.33, or § 75.37'', and by adding the words ''conditional data validation'' before the word ''provisions'' in the fifth sentence;

l. In paragraphs (c)(3)(xii)(A) and (B) by revising each occurrence of the words ''§ 75.31 or § 75.33'' to read ''§ 75.31, § 75.33, or § 75.37'', by adding a comma after the occurrence of the word ''diagnostic'' in each paragraph, and by adding the words ''conditional data validation'' before the word ''provisions'' in the second sentence of paragraph (c)(3)(xii)(B).

m. In paragraph (c)(4) by adding the word ''rate'' after the words ''heat input'' in the first sentence and by adding a new third sentence;

n. In paragraph (c)(5) by adding the word ''rate'' after the words ''heat input'';

o. Revising paragraphs (c)(6)(v), (c)(7)(ii), and (c)(8)(ii);

p. Adding a new paragraph (c)(7)(iii);

q. In the second sentence of paragraph (c)(10)(ii) by revising the word ''monitoring'' to read ''monitored''; and

r. In the second sentence of paragraph (c)(11) by revising the word ''calender'' to read ''calendar''.

The revisions and additions read as follows:

§ 75.74 Annual and ozone season monitoring and reporting requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) * * *

(*1*) If the monitor passed a linearity check on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for fewer than 336 cumulative unit or stack operating hours (as defined in § 72.2 of this chapter) in the previous ozone season, the owner or operator may have a grace period of up to 168 cumulative unit or stack operating hours to perform a linearity check, subject to the restrictions in this paragraph and in paragraph (c)(3)(xii) of this section, and the owner or operator may continue to submit quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than the allowable grace period of 168 cumulative operating hours in the current ozone season without a linearity check of the monitor having been performed, the owner or operator of the unit shall either report data from a certified backup monitoring system or reference method or shall report substitute data using the missing data procedures under paragraph (c)(7) of this section, starting with the first unit or stack operating hour after the grace period expires and continuing until the successful completion of a linearity check. Note that the grace period shall not extend beyond the end of the third calendar quarter.

* * * * *

(ii) * * * Notwithstanding this requirement, a pre-ozone season RATA need not be performed between October 1 and April 30, if a RATA was passed during the previous ozone season and if the conditions in paragraph (a)(3)(vii) of this section are met, thereby ensuring that the data from the CEMS are quality-assured at the beginning of the current ozone season.

* * * * *

(H) * * *

(*1*) If the monitoring system passed a RATA on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for fewer than 336 cumulative unit or stack operating hours (as defined in § 72.2 of this chapter) in the previous ozone season, the owner or operator may have a grace period of up to 720 cumulative unit or stack operating hours to perform a RATA, subject to the restrictions in this paragraph and in paragraph (c)(3)(xii) of this section, and the owner or operator may continue to report quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than the allowable grace period of 720 cumulative unit or stack operating hours in the current ozone season, without a RATA of the monitoring system having been performed, the owner or operator of the unit or stack shall either report data from a certified backup monitoring system or reference method or shall report substitute data using the missing data procedures under paragraph (c)(7) of this section, starting with the first unit operating hour after the grace period expires and continuing until the successful completion of the RATA. Note that the grace period shall not extend beyond the end of the third calendar quarter.

* * * * *

(3) * * *

(iii) * * * If the flow-to-load ratio test for the second calendar quarter is failed, the owner or operator shall follow the procedures in section 2.2.5(c)(8) of appendix B to this part. * * *

* * * * *

(v) * * * Automatic deadline extensions may be claimed for the two calendar quarters outside the ozone season (the first and fourth calendar quarters), since a fuel flow-to-load ratio test is not required in those quarters. * * *

* * * * *

(4) * * * The owner or operator shall include all calendar quarters in the year when determining the deadline for visual inspection of the primary fuel flowmeter element, as specified in section 2.1.6(c) of appendix D to this part.

* * * * *

(6) * * *

(v) The results of RATAs (and any other quality assurance test(s) required under paragraph (c)(2) or (c)(3) of this section) which affect data validation for the current ozone season, but which were performed outside the ozone season (i.e., between October 1 of the previous calendar year and April 30 of the current calendar year), shall be reported in the quarterly report for the second quarter of the current calendar year (or in the report for the third calendar quarter of the current calendar year, if the unit or stack does not operate in the second quarter).

(7) * * *

(ii) The standard missing data procedures of §§ 75.31 through 75.37 shall be used, with one exception. When a fuel which has a significantly higher NO_X emission rate than any of the fuel(s) combusted in prior ozone seasons is combusted in the unit, and no quality-assured NO_X data have been recorded in the current or any previous ozone season while combusting the new fuel, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, from a NO_X-diluent continuous emission monitoring system, or the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, from a NO_X concentration monitoring system. The maximum potential value used shall be specific to the new fuel. The owner or operator shall substitute the maximum potential value for each hour of missing NO_X data until the first hour that quality-assured NO_X data are obtained while combusting the new fuel, and then shall resume use of the standard missing data routines, either on a fuel-specific or non-fuel-specific basis; and

(iii) In order to apply the missing data routines described in §§ 75.31 through

75.37 on an ozone season-only basis, the procedures in those sections shall be modified as follows:

(A) The use of the initial missing data procedures in § 75.31 shall commence with the first unit operating hour in the first ozone season for which emissions data are required to be reported under § 75.64.

(B) In § 75.31(a), the phrases, ''during the first 720 quality-assured monitor operating hours within the ozone season'' and ''during the first 2,160 quality-assured monitor operating hours within the ozone season.'' apply respectively instead of the phrases ''during the first 720 quality-assured monitor operating hours'' and ''during the first 2,160 quality-assured monitor operating hours.''

(C) The sentence, ''The owner or operator of a unit shall use these procedures for no longer than three ozone seasons following initial certification'' applies instead of the last sentence of § 75.31(a).

(D) In § 75.32(a), the phrases ''the first 720 quality-assured monitor operating hours within the ozone season,'' ''the first 2,160 quality-assured monitor operating hours within the ozone season,'' and ''three ozone seasons'' apply, respectively, instead of the phrases ''the first 720 quality-assured monitor operating hours,'' ''the first 2,160 quality-assured monitor operating hours,'' and ''three years (26,280 clock hours).''

(E) In § 75.32(a)(1), the phrase ''Following initial certification, prior to completion of 3,672 unit operating hours within the subsequent ozone season(s)'' applies instead of the phrase ''Prior to completion of 8,760 unit operating hours following initial certification.''

(F) In Equation 8, the phrase ''Total unit operating hours within the ozone season'' applies instead of the phrase ''Total unit operating hours.''

(G) In § 75.32(a)(2), phrase, ''3,672 unit operating hours within the ozone season,'' applies instead of the phrase, ''8,760 unit operating hours'', and the phrase, ''three ozone seasons'' applies instead of the phrase, ''three years (26,280 clock hours).''

(H) In the numerator of Equation 9, the phrase, ''Total unit operating hours within the ozone season'' applies instead of the phrase ''Total unit operating hours'', and the phrase, ''3,672 unit operating hours within the ozone season'' applies instead of the phrase, ''8,760 unit operating hours''. In the denominator of Equation 9, the number ''3,672'' applies instead of ''8,760.''

(I) Use the following instead of the first three sentences in § 75.32(a)(3): ''When calculating percent monitor data availability using Equation 8 or 9, the owner or operator shall include all unit operating hours within the ozone season, and all monitor operating hours within the ozone season for which quality-assured data were recorded by a certified primary monitor; a certified redundant or non-redundant backup monitor or a reference method for that unit; or by an approved alternative monitoring system under subpart E of this part. No hours from more than three ozone seasons earlier shall be used in Equation 9.'' For a unit that has accumulated fewer than 3,672 unit operating hours in the previous three ozone seasons, use the following in the numerator of Equation 9, ''Total unit operating hours for which quality-assured data were recorded in the previous three ozone seasons'', and in the denominator of Equation 9 use ''Total unit operating hours in the previous three ozone seasons.''

(J) In § 75.33(a), the phrases ''the first 720 quality-assured monitor operating hours within the ozone season,'' ''the first 2,160 quality-assured monitor operating hours within the ozone season,'' and ''three ozone seasons'' apply, respectively, instead of the phrases ''the first 720 quality-assured monitor operating hours,'' ''the first 2,160 quality-assured monitor operating hours,'' and ''three years (26,280 clock hours).''

(K) Instead of the last sentence of § 75.33(a), use ''For the purposes of missing data substitution, the owner or operator of a unit shall not use quality-assured monitor operating hours of data that were recorded more than three ozone seasons prior to the ozone season in which the missing data period occurs.''

(L) In §§ 75.33(b), 75.33(c), 75.35, 75.36, and 75.37, the phrases, ''720 quality-assured monitor operating hours within the ozone season'' and ''2,160 quality-assured monitor operating hours within the ozone season'' apply, respectively, instead of the phrases ''720 quality-assured monitor operating hours'' and ''2,160 quality-assured monitor operating hours.''

(M) In § 75.34(a)(2), the phrases, ''720 (or 2,160) quality-assured monitor operating hours within the ozone season,'' ''previous 720 quality-assured monitor operating hours recorded within the ozone season in the uncontrolled database,'' and ''the requisite number of quality-assured monitor operating hours of SO_2 or NO_X data recorded within the ozone season in the appropriate database for the lookback periods,'' apply respectively instead of ''720 (or 2,160) quality-assured monitor operating hours,'' ''previous 720 quality-assured monitor operating hours in the uncontrolled database,'' and ''the requisite number of quality-assured monitor operating hours of SO_2 or NO_X data in the appropriate database for the lookback periods.''

(8) * * *

(ii) For units with add-on emission controls, using the missing data option in § 75.34(a)(1), the range of operating parameters for add-on emission controls, as described in § 75.34(a) and information for verifying proper operation of the add-on emission controls during missing data periods, as described in § 75.34(d). For units using the missing data option in § 75.34(a)(2), information documenting the operating status of the add-on emission controls during unit operation, as described in § 75.34(d).

* * * * *

Appendix A Section 1 [Amended].

47. Section 1 of Appendix A to Part 75 is amended by:

a. In section heading 1.1 by revising the words ''Pollutant Concentration and CO_2 or O_2'' to read ''Gas'';

b. In the second sentence of section 1.1 by revising the words ''SO_2 pollutant concentration monitor or NO_X'' to read ''SO_2, CO_2, O_2, or NO_X concentration monitoring system or NO_X-diluent'';

c. In section heading 1.1.1 by removing the words ''Pollutant Concentration and CO_2 or O_2'';

d. In section heading 1.1.2 by removing the words ''Pollutant Concentration and CO_2 or O_2 Gas'';

e. In the fourth sentence of section 1.2 by revising the words ''section 6.5.2'' to read ''section 6.5.2.1''; and

f. Removing the first sentence of section 1.2.2.

48. Section 2 of Appendix A to Part 75 is amended by:

a. Revising the second and third sentences of section 2.1;

b. In the first sentence of section 2.1.1 by revising the words ''this section 2'' to read ''sections 2.1.1.1 through 2.1.1.5 of this appendix'';

c. Moving Equations A–1a and A–1b and the variable equations and Note following them from paragraph (c) of section 2.1.1.1 to the end of paragraph (a) of section 2.1.1.1;

d. Revising the definition of the variable ''%S'' in Equation A–1b of paragraph (a) of section 2.1.1.1;

e. Adding a definition for the variable ''GCV'' after the definition of the variable ''$\%CO_{2W}$'' in Equation A–1b in paragraph (a) of section 2.1.1.1;

f. Adding two sentences to the end of paragraph (b) of section 2.1.1.1;

g. Adding three sentences to the end of paragraph (a) of section 2.1.1.2;

h. In the definition of MPC in Equation A–2 in paragraph (c) of section 2.1.1.2 by adding the words ''in section 2.1.1.1 of this appendix'' after the words ''as determined by Eq. A–1a or A–1b'';

i. Revising the fifth and tenth sentences of section 2.1.1.3;

j. In paragraph (c) of section 2.1.1.4 by adding a sentence after the first sentence;

k. Removing the first sentence of paragraph (d) of section 2.1.1.4 and adding three sentences in its place;

l. In the first sentence of section 2.1.1.5 by revising the words ''paragraphs (a) and (b)'' to read ''paragraphs (a), (b), and (c)'';

m. In paragraph (c) of section 2.1.1.5 by revising the final sentence;

n. In section 2.1.2 by revising the words ''section 2.1.2.1'' to read ''sections 2.1.2.1 through 2.1.2.5 of this appendix'';

o. In paragraph (a) of section 2.1.2.1 by adding two new sentences at the end of Option 1, by removing the word ''or'' from Option 3, by revising the period at the end of Option 4 to read ''; or'', and by adding a new Option 5;

p. Adding two new sentences to the end of paragraph (c) of section 2.1.2.1;

q. Revising the first sentence of paragraph (d) of section 2.1.2.1;

r. Revising the second sentence of paragraph (e) and Table 2–2 in section 2.1.2.1;

s. Revising paragraph (a) of section 2.1.2.2;

t. In the third sentence of paragraph (b) of section 2.1.2.2 by adding the words ''(if applicable)'' after the words '' NO_X emissions'';

u. Revising the second and third sentences of paragraph (c) of section 2.1.2.2;

v. Revising the fourth sentence of paragraph (a) of section 2.1.2.3;

w. In the first sentence of paragraph (b) of section 2.1.2.3 by revising the words ''requires a span'' to read ''requires or allows the use of a span value'';

x. Revising the second sentence of paragraph (b) of section 2.1.2.4 and adding a new sentence after the first sentence;

y. Removing the first sentence of paragraph (c) of section 2.1.2.4 and adding three sentences in its place;

z. In the third sentence of section 2.1.2.5 by revising the words ''paragraphs (a) and (b)'' to read ''paragraphs (a), (b), and (c)'';

aa. In paragraph (c) of section 2.1.2.5 by adding the word ''diagnostic'' before the words ''linearity test'' in the fifth sentence and by revising the final sentence;

bb. Amending section 2.1.3 by adding a sentence to the end of the section;

cc. In section 2.1.3.3 by adding two new sentences to the beginning of the section;

dd. In the fifth sentence of section 2.1.4.2 by adding the words '', as specified in section 2.2.2.1 of this appendix'' after the words ''of the calibration span value'';

ee. In section 2.1.6 by adding a sentence to the end of that section; and

ff. Revising section 2.2.

The revisions and additions read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

2. Equipment Specifications

2.1 Instrument Span and Range

* * * To meet these objectives, select the range such that the majority of the readings obtained during typical unit operation are kept, to the extent practicable, between 20.0 and 80.0 percent of the full-scale range of the instrument. These guidelines do not apply to: (1) SO_2 readings obtained during the combustion of very low sulfur fuel (as defined in § 72.2 of this chapter); (2) SO_2 or NO_X readings recorded on the high measurement range, for units with SO_2 or NO_X emission controls and two span values, unless the emission controls are operated seasonally (for example, only during the ozone season); or (3) SO_2 or NO_X readings less than 20.0 percent of full-scale on the low measurement range for a dual span unit, provided that the maximum expected concentration (MEC), low-scale span value, and low-scale range settings have been determined according to sections 2.1.1.2, 2.1.1.4(a), (b), and (g) of this appendix (for SO_2), or according to sections 2.1.2.2, 2.1.2.4(a) and (f) of this appendix (for NO_X).

2.1.1 SO_2 Pollutant Concentration Monitors

* * *

2.1.1.1 Maximum Potential Concentration

(a) * * *

Where, * * *

%S = Maximum sulfur content of fuel to be fired, wet basis, weight percent, as determined according to the applicable method in paragraph (c) of section 2.1.1.1.

* * * * *

GCV = Minimum gross calorific value of the fuel or blend to be combusted, based on historical fuel sampling and analysis data or, if applicable, based on the fuel contract specifications (Btu/lb). If based on fuel sampling and analysis, the GCV shall be determined according to the applicable method in paragraph (c) of section 2.1.1.1.

* * * * *

(b) * * * Note that the initial MPC value is subject to periodic review under section 2.1.1.5 of this appendix. If an MPC value is found to be either inappropriately high or low, the MPC shall be adjusted in accordance with section 2.1.1.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

2.1.1.2 Maximum Expected Concentration

(a) * * * Each initial MEC value shall be documented in the monitoring plan required under § 75.53. Note that each initial MEC value is subject to periodic review under section 2.1.1.5 of this appendix. If an MEC value is found to be either inappropriately high or low, the MEC shall be adjusted in accordance with section 2.1.1.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

2.1.1.3 Span Value(s) and Range(s)

* * * If the SO_2 span concentration is ≤ 500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm. * * * If an existing State, local, or federal requirement for span of an SO_2 pollutant concentration monitor requires or allows the use of a span value lower than that required by this section or by section 2.1.1.4 of this appendix, the State, local, or federal span value may be used if a satisfactory explanation is included in the monitoring plan, unless span and/or range adjustments become necessary in accordance with section 2.1.1.5 of this appendix. * * *

2.1.1.4 Dual Span and Range Requirements

* * * * *

(c) * * * Alternatively, if RATAs are performed and passed on both measurement ranges, the owner or operator may use two separate SO_2 analyzers connected to separate probes and sample interfaces. * * *

(d) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: when a single probe and sample interface are used, either designate the low and high monitor ranges as separate SO_2 components of a single, primary SO_2 monitoring system; designate the low and high monitor ranges as the SO_2 components of two separate, primary SO_2 monitoring systems; designate the normal monitor range as a primary monitoring system and the other monitor range as a non-redundant backup monitoring system; or, when a single, dual-range SO_2 analyzer is used, designate the low and high ranges as a single SO_2 component of a primary SO_2 monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)). When two SO_2 analyzers are connected to separate probes and sample interfaces, designate the analyzers as the SO_2 components of two separate, primary SO_2 monitoring systems. For units with SO_2 controls, if the default high range value is used, designate the low range analyzer as the SO_2 component of a primary SO2 monitoring system. * * *

* * * * *

2.1.1.5 Adjustment of Span and Range

* * * * *

(c) * * * Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

* * * * *

2.1.2.1 Maximum Potential Concentration

(a) * * *

Option 1: * * * For cement kilns, use 2000 ppm as the MPC. For process heaters, use 200 ppm if the unit burns only gaseous fuel and 500 ppm if the unit burns oil;

* * * * *

Option 5: If a reliable estimate of the uncontrolled NO_X emissions from the unit is available from the manufacturer, the estimated value may be used.

* * * * *

(c) * * * Note that whichever MPC option in section 2.1.2.1(a) of this appendix is selected, the initial MPC value is subject to periodic review under section 2.1.2.5 of this appendix. If an MPC value is found to be either inappropriately high or low, the MPC shall be adjusted in accordance with section 2.1.2.5, and corresponding span and range adjustments shall be made, if necessary.

(d) For units with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), or for units equipped with dry low-NO_X (DLN) technology, NO_X emission testing may only be used to determine the MPC if testing can be performed either upstream of the add-on controls or during a time or season when the add-on controls or DLN are not in operation. * * *

(e) * * * For a unit with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), or for a unit equipped with dry low-NO_X (DLN) technology, historical CEM data may only be used to determine the MPC if the 720 quality assured monitor operating hours of CEM data are collected upstream of the add-on controls or if the 720 hours of data include periods when the add-on controls or DLN are not in operation. * * *

TABLE 2–2.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—GAS- AND OIL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom	380
Wall-fired dry bottom	600
Roof-fired (vertically-fired) dry bottom, arch-fired	550
Existing combustion turbine	200
New combustion turbine, permitted to fire either oil or natural gas	200
New combustion turbine, permitted to fire only natural gas	150
Others	(1)

[1] As approved by the Administrator.

2.1.2.2 Maximum Expected Concentration

(a) Make an initial determination of the maximum expected concentration (MEC) of NO_X during normal operation for affected units with add-on NO_X controls of any kind (e.g., steam injection, water injection, SCR, or SNCR) and for turbines that use dry low-NO_X technology. Also determine the MEC for uncontrolled units and units that use only low NO_X burners (LNB) for NO_X control, if more than one type of fuel is combusted in the unit. Determine a separate MEC value for each type of fuel (or blend) combusted in the unit, except for fuels that are only used for unit startup and/or flame stabilization and except for the fuel or blend that was used to determine the MPC under section 2.1.2.1 of this appendix. Calculate the MEC of NO_X using Equation A–2, if applicable, inserting the maximum potential concentration, as determined using the procedures in section 2.1.2.1 of this appendix. Where Equation A–2 is not applicable, set the MEC either by: (1) Measuring the NO_X concentration using the testing procedures in this section; (2) using historical CEM data over the previous 720 (or more) quality assured monitor operating hours; or (3) if the unit has add-on NO_X controls or uses dry low NO_X technology, and has a federally-enforceable permit limit for NO_X concentration, the permit limit may be used as the MEC. Include in the monitoring plan for the unit each MEC value and the method by which the MEC was determined. Note that each initial MEC value is subject to periodic review under section 2.1.2.5 of this appendix. If an MEC value is found to be either inappropriately high or low, the MEC shall be adjusted in accordance with section 2.1.2.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

(c) * * * The data base for the MEC shall not include any CEM data recorded during unit startup, shutdown, or malfunction or (for units with add-on NO_X controls or turbines using dry low NO_X technology) during any NO_X control device malfunctions or outages. All NO_X control devices and methods used to reduce NO_X emissions (if applicable) must be operating properly during each hour. * * *

2.1.2.3 Span Value(s) and Range(s)

(a) * * * If the NO_X span concentration is ≤500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm. * * *

* * * * *

2.1.2.4 Dual Span and Range Requirements

* * * * *

(b) * * * Two separate NO_X analyzers connected to separate probes and sample interfaces may be used if RATAs are passed on both ranges. For units with add-on NO_X emission controls (e.g., steam injection, water injection, SCR, or SNCR) or units equipped with dry low-NO_X technology, the owner or operator may use a low range analyzer and a ''default high range value,'' as described in section 2.1.2.4(e) of this appendix, in lieu of maintaining and quality assuring a high-scale range. * * *

(c) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: When a single probe and sample interface are used, either designate the low and high ranges as separate NO_X components of a single, primary NO_X monitoring system; designate the low and high ranges as the NO_X components of two separate, primary NO_X monitoring systems; designate the normal range as a primary monitoring system and the other range as a non-redundant backup monitoring system; or, when a single, dual-range NO_X analyzer is used, designate the low and high ranges as a single NO_X component of a primary NO_X monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)). When two NO_X analyzers are connected to separate probes and sample interfaces, designate the analyzers as the NO_X components of two separate, primary NO_X monitoring systems. For units with add-on NO_X controls or units equipped with dry low-NO_X technology, if the default high range value is used, designate the low range analyzer as the NO_X component of the primary NO_X monitoring system. * * *

* * * * *

2.1.2.5 Adjustment of Span and Range

* * * * *

(c) * * * Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

2.1.3 CO_2 and O_2 Monitors

* * * If a dual-range or autoranging diluent analyzer is installed, the analyzer may be represented in the monitoring plan as a single component, using a special component type code specified by the Administrator to satisfy the requirements of § 75.53(e)(1)(iv)(D).

* * * * *

2.1.3.3 Adjustment of Span and Range

The MPC and MEC values for diluent monitors are subject to the same periodic review as SO_2 and NO_X monitors (see sections 2.1.1.5 and 2.1.2.5 of this appendix). If an MPC or MEC value is found to be either inappropriately high or low, the MPC shall be adjusted and corresponding span and range adjustments shall be made, if necessary. * * *

* * * * *

2.1.6 Maximum Potential Moisture Percentage

* * * Alternatively, a default maximum potential moisture value of 15 percent H_2O may be used.

2.2 Design for Quality Control Testing

2.2.1 Pollutant Concentration and CO_2 or O_2 Monitors

(a) Design and equip each pollutant concentration and CO_2 or O_2 monitor with a calibration gas injection port that allows a check of the entire measurement system when calibration gases are introduced. For extractive and dilution type monitors, all monitoring components exposed to the sample gas, (e.g., sample lines, filters, scrubbers, conditioners, and as much of the probe as practicable) are included in the measurement system. For in situ type

monitors, the calibration must check against the injected gas for the performance of all active electronic and optical components (e.g. transmitter, receiver, analyzer).

(b) Design and equip each pollutant concentration or CO_2 or O_2 monitor to allow daily determinations of calibration error (positive or negative) at the zero- and mid- or high-level concentrations specified in section 5.2 of this appendix.

2.2.2 Flow Monitors

Design all flow monitors to meet the applicable performance specifications.

2.2.2.1 Calibration Error Test

Design and equip each flow monitor to allow for a daily calibration error test consisting of at least two reference values: (1) Zero to 20 percent of span or an equivalent reference value (e.g., pressure pulse or electronic signal) and (2) 50 to 70 percent of span. Flow monitor response, both before and after any adjustment, must be capable of being recorded by the data acquisition and handling system. Design each flow monitor to allow a daily calibration error test of (1) the entire flow monitoring system, from and including the probe tip (or equivalent) through and including the data acquisition and handling system, or (2) the flow monitoring system from and including the transducer through and including the data acquisition and handling system.

2.2.2.2 Interference Check

(a) Design and equip each flow monitor with a means to ensure that the moisture expected to occur at the monitoring location does not interfere with the proper functioning of the flow monitoring system. Design and equip each flow monitor with a means to detect, on at least a daily basis, pluggage of each sample line and sensing port, and malfunction of each resistance temperature detector (RTD), transceiver or equivalent.

(b) Design and equip each differential pressure flow monitor to provide (1) an automatic, periodic back purging (simultaneously on both sides of the probe) or equivalent method of sufficient force and frequency to keep the probe and lines sufficiently free of obstructions on at least a daily basis to prevent velocity sensing interference, and (2) a means for detecting leaks in the system on at least a quarterly basis (manual check is acceptable).

(c) Design and equip each thermal flow monitor with a means to ensure on at least a daily basis that the probe remains sufficiently clean to prevent velocity sensing interference.

(d) Design and equip each ultrasonic flow monitor with a means to ensure on at least a daily basis that the transceivers remain sufficiently clean (e.g., backpurging system) to prevent velocity sensing interference.

Appendix A to Part 75 [Amended]

49. Section 3 of Appendix A to Part 75 is amended by:

a. In section heading 3.3.1 by adding the word ''Monitors'' after the word ''SO_2'';

b. Revising section 3.3.1;

c. Revising paragraph (a) of section 3.3.2;

d. In the first sentence of paragraph (b) of section 3.3.2 by revising the words ''not exceed'' to read ''be within'';

e. In section heading 3.3.3 by removing the words ''Pollutant Concentration'';

f. In paragraph 3.3.3 by adding ''±'' before the words ''1.0 percent'';

g. In section heading 3.3.4 by adding the word ''Monitors'' after the word ''Flow'';

h. Revising section 3.3.4;

i. In the second sentence of section 3.3.6 by revising the words ''appendix are'' to read ''appendix is''; and

j. Revising the second sentence of paragraph (b) of section 3.3.7.

The revisions and additions read as follows:

3. Performance Specifications

* * * * *

3.3 Relative Accuracy

3.3.1 Relative Accuracy for SO_2 Monitors

(a) The relative accuracy for SO_2 pollutant concentration monitors shall not exceed 10.0 percent except as provided below in this section.

(b) For affected units where the average of the reference method measurements of SO_2 concentration during the relative accuracy test audit is less than or equal to 250.0 ppm, the mean value of the monitor measurements shall be within ±15.0 ppm of the reference method mean value wherever the relative accuracy specification of 10.0 percent is not achieved.

3.3.2 Relative Accuracy for NO_X-Diluent Continuous Monitoring Systems

(a) The relative accuracy for NO_X-diluent continuous emission monitoring systems shall not exceed 10.0 percent at any load level at which a RATA is performed (the low, mid, or high load level, as defined in section 6.5.2.1 of this appendix).

* * * * *

3.3.4 Relative Accuracy for Flow Monitors

(a) The relative accuracy of flow monitors shall not exceed 10.0 percent at any load level at which a RATA is performed (the low, mid, or high load level, as defined in section 6.5.2.1 of this appendix).

(b) For affected units where the average of the flow reference method measurements of gas velocity at a particular load level of the relative accuracy test audit is less than or equal to 10.0 fps, the mean value of the flow monitor velocity measurements shall be within ±2.0 fps of the reference method mean value in fps at that load level, wherever the 10.0 percent relative accuracy specification is not achieved.

* * * * *

3.3.7 Relative Accuracy for NO_X Concentration Monitoring Systems

* * * * *

(b) * * * Alternatively, for affected units where the average of the reference method measurements of NO_X concentration during the relative accuracy test audit is less than or equal to 250.0 ppm, the mean value of the continuous emission monitoring system measurements shall be within ±15.0 ppm of the reference method mean value.

* * * * *

50. Section 4 of Appendix A to Part 75 is amended by:

a. Revising the second sentence of the first paragraph of section 4;

b. Removing the last sentence of the first paragraph of section 4; and

c. In subparagraph (3) of section 4 by adding the words ''the appropriate'' before the word ''units'', by removing the words ''of the standard'', and by adding the word ''e.g.,'' before the words ''lb/hr''.

The revisions and additions read as follows:

4. Data Acquisition and Handling Systems

* * * These systems also shall have the capability of interpreting and converting the individual output signals from an SO_2 pollutant concentration monitor, a flow monitor, a CO_2 monitor, a NO_X pollutant concentration monitor, and a NO_X-diluent continuous emission monitoring system to produce a continuous readout of pollutant mass emission rates in the appropriate units (e.g., lb/hr, lb/mmBtu, tons/hr). * * *

* * * * *

Appendix A to Part 75 [Amended]

51. Section 6 of Appendix A to Part 75 is amended by:

a. In the first sentence of paragraph (a) of section 6.2 by adding the word ''conditional'' before the words ''data validation procedures'';

b. In section 6.3.1 by removing the word ''extended'' before the words ''unit outages'' in the second sentence, and by adding a new sentence after the second sentence;

c. In the first sentence of paragraph (a) of section 6.3.1 by adding the word ''conditional'' before the words ''data validation procedures'';

d. In the fourth sentence of section 6.3.2 by removing the word ''extended'' before the words ''unit outages'', and by adding a new sentence after the fourth sentence;

e. In the first sentence of paragraph (a) of section 6.3.2 by adding the word ''conditional'' before the words ''data validation procedures'';

f. In the first sentence of paragraph (a) of section 6.4 by adding the word ''conditional'' before the words ''data validation procedures'';

g. In the first sentence of section 6.5 by adding the word ''and'' after the words ''heat input,'' and by removing the words ''and each SO_2-diluent continuous emission monitoring system'';

h. Revising paragraphs (a) and (c) of section 6.5;

i. In the first sentence of paragraph (f)(1) of section 6.5 by adding the word ''conditional'' before the words ''data validation procedures'';

j. In the second sentence of paragraph (g) of section 6.5 by removing the words ''SO_2-diluent'';

k. Revising paragraph (a) of section 6.5.1 and paragraph (a) of section 6.5.2;

l. In paragraph (b) of section 6.5.2 by revising the words ''section 6.5.2.1'' to read ''section 6.5.2.1(d)'';

m. In paragraph (c) of section 6.5.2 by adding the words ''(or three operating levels)'' after the word ''level(s)'';

n. In paragraph (d) of section 6.5.2 by adding the words ''(or operating levels)'' after the word ''level(s)'';

o. In section heading 6.5.2.1 by adding the words ''(or Operating)'' after the words ''Normal Load'';

p. Revising paragraph (a) of section 6.5.2.1;

q. In the first sentence of paragraph (b) of section 6.5.2.1 by revising the words ''30.0 to 60.0 percent'' to read ''> 30.0 percent, but ≤ 60.0 percent'' and revising the words ''60.0 to 100.0 percent'' to read ''> 60.0 percent'';

r. Revising paragraphs (c) and (d) of section 6.5.2.1;

s. Revising the first sentence of paragraph (e) of section 6.5.2.1;

t. Removing and reserving section 6.5.3;

u. Amending section 6.5.6 by removing the third sentence;

v. In paragraph (b)(2) of section 6.5.6 by revising the number ''1.0'' To read ''1.2'';

w. Adding paragraph (b)(5) to section 6.5.6;

x. In the first sentence of paragraph (a) of sections 6.5.6.1 and 6.5.6.2 by revising the words ''normal load'' to read ''the normal load level (or normal operating level)'';

y. In paragraph (c) of section 6.5.6.3 by removing the words ''§ 75.56(a)(7) or'' and the words '', as applicable'';

z. In paragraph (a) of section 6.5.7 by removing the words ''or SO_2-diluent'' in the fourth sentence, by adding one sentence before, and two sentences after, the ninth sentence, and by removing the words ''§ 75.56(a)(5)(ix) and'' from the next to last sentence; and

aa. In section 6.5.10 by adding a comma after the number ''7D'', and by adding a new third sentence.

The revisions and additions read as follows:

6. Certification Tests and Procedures

* * * * *

6.3 7-Day Calibration Error Test

6.3.1 Gas Monitor 7-Day Calibration Error Test

* * * Notwithstanding this requirement, for a peaking unit (as defined in § 72.2 of this chapter), only 3 of the 7 days in the test need be unit operating days. * * *

* * * * *

6.3.2 Flow Monitor 7-Day Calibration Error Test

* * * Notwithstanding these requirements, for a peaking unit (as defined in § 72.2 of this chapter), only 3 of the 7 days in the test need be unit operating days. * * *

* * * * *

6.5 Relative Accuracy and Bias Tests (General Procedures)

* * * * *

(a) Except as provided in § 75.21(a)(5), perform each RATA while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is a normal primary or backup fuel for that unit (for some units, more than one type of fuel may be considered normal, e.g., a unit that combusts gas or oil on a seasonal basis). For units that co-fire fuels as the predominant mode of operation, perform the RATAs while co-firing. When relative accuracy test audits are performed on continuous emission monitoring systems installed on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts.

* * * * *

(c) For monitoring systems with dual ranges, perform the relative accuracy test on the range normally used for measuring emissions. For units with add-on SO_2 or NO_X controls that operate continuously rather than seasonally, or for units that need a dual range to record high concentration ''spikes'' during startup conditions, the low range is considered normal. However, for some dual span units (e.g., for units that use fuel switching or for which the emission controls are operated seasonally), provided that both monitor ranges are connected to a common probe and sample interface, either of the two measurement ranges may be considered normal; in such cases, perform the RATA on the range that is in use at the time of the scheduled test. If the low and high measurement ranges are connected to separate sample probes and interfaces, RATA testing on both ranges is required.

* * * * *

6.5.1 Gas Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 pollutant concentration monitor, each CO_2 or O2 diluent monitor used to determine heat input, each NO_X-diluent continuous emission monitoring system, and each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2) at the normal load level or normal operating level for the unit (or combined units, if common stack), as defined in section 6.5.2.1 of this appendix. If two load levels or operating levels have been designated as normal, the RATAs may be done at either load level.

* * * * *

6.5.2 Flow Monitor RATAs (Special Considerations)

(a) Except for flow monitors on bypass stacks/ducts and peaking units, perform relative accuracy test audits for the initial certification of each flow monitor at three different exhaust gas velocities (low, mid, and high), corresponding to three different load levels or operating levels within the range of operation, as defined in section 6.5.2.1 of this appendix. For a common stack/duct, the three different exhaust gas velocities may be obtained from frequently used unit/load or operating level combinations for the units exhausting to the common stack. Select the three exhaust gas velocities such that the audit points at adjacent load or operating levels (i.e., low and mid or mid and high), in megawatts (or in thousands of lb/hr of steam production or in ft/sec, as applicable), are separated by no less than 25.0 percent of the range of operation, as defined in section 6.5.2.1 of this appendix.

* * * * *

6.5.2.1 Range of Operation and Normal Load (or Operating) Load Level(s)

(a) The owner or operator shall determine the upper and lower boundaries of the ''range of operation'' as follows for each unit (or combination of units, for common stack configurations) that uses CEMS to account for its emissions and for each unit that uses the optional fuel flow-to-load quality assurance test in section 2.1.7 of appendix D to this part:

(1) For affected units that produce electrical output (in megawatts) or thermal output (in klb/hr of steam production), the lower boundary of the range of operation of a unit shall be the minimum safe, stable load. For common stacks, the minimum safe, stable load shall be the lowest of the minimum safe, stable loads for any of the units discharging through the stack. Alternatively, for a group of frequently-operated units that serve a common stack, the sum of the minimum safe, stable loads for the individual units may be used as the lower boundary of the range of operation. The upper boundary of the range of operation of a unit shall be the maximum sustainable load. The ''maximum sustainable load'' is the higher of either: the nameplate or rated capacity of the unit, less any physical or regulatory limitations or other deratings; or the highest sustainable unit load, based on at least four quarters of representative historical operating data. For common stacks, the maximum sustainable load is the sum of all of the maximum sustainable loads of the individual units discharging through the stack, unless this load is unattainable in practice, in which case use the highest sustainable combined load for the units that discharge through the stack, based on at least four quarters of representative historical operating data. The load values for the unit(s) shall be expressed either in units of megawatts or thousands of lb/hr of steam load; or

(2) For affected units that do not produce electrical or thermal output, the lower boundary of the range of operation shall be the minimum expected flue gas velocity (in ft/sec) during normal, stable operation of the unit. The upper boundary of the range of operation shall be the maximum potential flue gas velocity (in ft/sec) as defined in section 2.1.4.1 of this appendix. The minimum expected and maximum potential velocities may be derived from the results of reference method testing or by using Equation A–3a or A–3b (as applicable) in section 2.1.4.1 of this appendix. If Equation A-3a or A–3b is used to determine the minimum expected velocity, replace the word ''maximum'' to read ''minimum'' in the definitions of ''MPV,'' ''H_f,'' ''% O_{2d},'' and ''% H_2O,'' and replace the word ''minimum'' to read ''maximum'' in the definition of ''CO_{2d}.''

* * * * *

(c) *Analysis of historical load or operating level data.* (1) For units that produce electrical or thermal output, the owner or operator shall identify, for each affected unit or common stack (except for peaking units), the ''normal'' load level or levels (low, mid or high), based on the operating history of the unit(s). To identify the normal load level(s), the owner or operator shall, at a minimum, determine the relative number of operating hours at each of the three load levels, low, mid and high over the past four representative operating quarters. The owner or operator shall determine, to the nearest 0.1 percent, the percentage of the time that each load level (low, mid, high) has been used during that time period. A summary of the data used for this determination and the calculated results shall be kept on-site in a format suitable for inspection. For new units or newly-affected units, the data analysis in this paragraph may be based on fewer than four quarters of data if fewer than four representative quarters of historical load data are available. Or, if no historical load data are available, the owner or operator may designate the normal load based on the expected or projected manner of operating the unit. However, in either case, once four quarters of representative data become available, the historical load analysis shall be repeated.

(2) If the affected unit does not produce electrical or steam load, follow the procedures in paragraph (c)(1) of this section, except that:

(i) The words ''load level'' shall read ''operating level;'' and

(ii) If the unit does not have an installed flow monitor, the historical data analysis described in paragraph (c)(1) of this section is not required.

(d) *Determination of normal load.* (1) Based on the analysis of the historical load data described in paragraph (c) of this section, the owner or operator shall, for units that produce electrical or thermal output, designate the most frequently used load level as the normal load level for the unit (or combination of units, for common stacks). The owner or operator may also designate the second most frequently used load level as an additional normal load level for the unit or stack. For peaking units, normal load designations are unnecessary; the entire operating load range shall be considered normal. If the manner of operation of the unit changes significantly, such that the designated normal load(s) or the two most frequently used load levels change, the owner or operator shall repeat the historical load analysis and shall redesignate the normal load(s) and the two most frequently used load levels, as appropriate. A minimum of two representative quarters of historical load data are required to document that a change in the manner of unit operation has occurred. Update the electronic monitoring plan whenever the normal load level(s) and the two most frequently-used load levels are redesignated.

(2) For units that do not produce electrical or thermal output, follow the procedures in paragraph (d)(1) of this section, except that:

(i) The words ''load'' and ''load level'' shall read ''operating level;'' and

(ii) If the unit does not have an installed flow monitor, the two most frequently-used operating levels and the normal operating level(s) shall be determined using sound engineering judgment, in lieu of performing a historical data analysis. The operating level determinations shall be based on knowledge of the unit, operating experience with the unit, and actual stack gas velocity measurements using EPA Method 2 in appendix A to part 60 of this chapter (or its allowable alternatives).

(e) The owner or operator shall report the upper and lower boundaries of the range of operation for each unit (or combination of units, for common stacks), in units of megawatts or thousands of lb/hr of steam production or ft/sec (as applicable), in the electronic quarterly report required under § 75.64. * * *

* * * * *

6.5.6 Reference Method Traverse Point Selection

* * * * *

(b) * * *

(5) If Method 7E is used as the reference method for the RATA of a NO_X CEMS installed on a combustion turbine, the reference method measurements may be made at the sampling points specified in section 6.1.2 of Method 20 in appendix A to part 60 of this chapter.

* * * * *

6.5.7 Sampling Strategy

(a) * * * Also, allow sufficient measurement time to ensure that stable temperature readings are obtained at each traverse point, particularly at the first measurement point at each sample port, when a probe is moved sequentially from port-to-port. * * * Alternatively, moisture measurements for molecular weight determination may be performed before and after a series of RATA runs at a particular load level (low, mid, or high), provided that the time interval between the two moisture measurements does not exceed three hours. If this option is selected, the results of the two moisture determinations shall be averaged arithmetically and applied to all RATA runs in the series. * * *

* * * * *

6.5.10 Reference Methods

* * * Notwithstanding these requirements, Method 20 may be used as the reference method for relative accuracy test audits of NO_X monitoring systems installed on combustion turbines.

Appendix A to Part 75 [Amended]

52. Section 7 of Appendix A to Part 75 is amended by:

a. In section heading 7.3 by revising the words ''SO_2–Diluent Continuous Emission'' to read ''O_2 Monitors, NO_X Concentration'';

b. Revising the first sentence of section 7.3;

c. Revising the variable

$$"\sum_{i=1}^{n}"$$

in the list of defined variables for Eq. A–7 to be

$$"\sum_{i=1}^{n} d_i"$$

and removing the final sentence of section 7.3.1;

d. In the section heading and text of section 7.4 by revising the word '' NO_X'' to read '' NO_X-diluent'';

e. In section heading 7.4.2 by removing the words ''(Monitoring System)'';

f. In the second sentence of section 7.6.1 by adding the words ''or NO_X'' after both occurrences of the word ''SO_2'' and the third sentence by revising the word '' NO_X'' to read ''NO_Xdiluent'';

g. In paragraph (a) of section 7.7 by removing the fourth sentence;

h. In paragraph (b) of section 7.7 by removing the first two sentences and adding four new sentences;

i. In the variable ''$(\text{Heat Input})_{avg}$'' under Eq. A–13a in paragraph (c) of section 7.7 by adding a second and third sentence to the definition;

j. In paragraph (d) of section 7.7 by adding the words ''(i.e., the arithmetic average of the diluent gas concentrations for all clock hours in which a RATA run was performed)'' to the end of the sentence;

k. In section 7.8 by designating the existing text as paragraph (a), removing

the first sentence, adding the words ''and section 2.2.5 of appendix B to this part'' to the end of the second sentence, and adding a new paragraph (b); and

l. Revising Figure 6.

The revisions and additions read as follows:

7. Calculations

* * * * *

7.3 Relative Accuracy for SO_2 and CO_2 Pollutant Concentration Monitors, O_2 Monitors, NO_X Concentration Monitoring Systems, and Flow Monitors

Analyze the relative accuracy test audit data from the reference method tests for SO_2 and CO_2 pollutant concentration monitors, O_2 monitors used only for heat input rate determination, NO_X concentration monitoring systems, and flow monitors using the following procedures. * * *

* * * * *

7.7 Reference Flow-to-Load Ratio or Gross Heat Rate

* * * * *

(b) In Equation A–13, for a common stack, determine L_{avg} by summing, for each RATA run, the operating loads of all units discharging through the common stack, and then taking the arithmetic average of the summed loads. For a unit that discharges its emissions through multiple stacks, either determine a single value of Q_{ref} for the unit or a separate value of Q_{ref} for each stack. In the former case, calculate Q_{ref} by summing, for each RATA run, the volumetric flow rates through the individual stacks and then taking the arithmetic average of the summed RATA run flow rates. In the latter case, calculate the value of Q_{ref} for each stack by taking the arithmetic average, for all RATA runs, of the flow rates through the stack. * * *

(c) * * *

$(\text{Heat Input})_{avg}$ = * * * For multiple stack configurations, if the reference GHR value is determined separately for each stack, use the hourly heat input measured at each stack. If the reference GHR is determined at the unit level, sum the hourly heat inputs measured at the individual stacks.

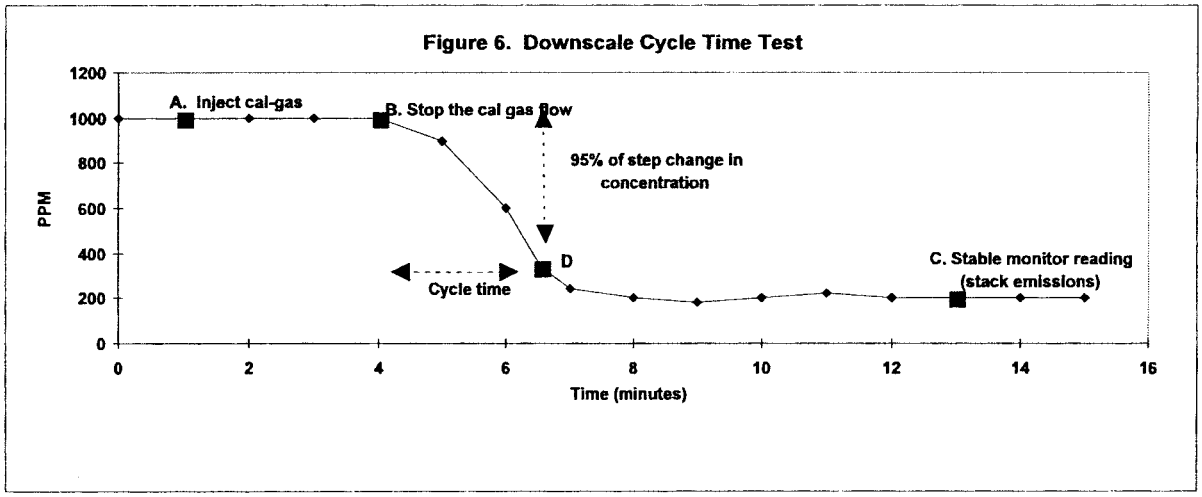
* * * * *

7.8 Flow-to-Load Test Exemptions

* * * * *

(b) Units that do not produce electrical output (in megawatts) or thermal output (in klb of steam per hour) are exempted from the flow-to-load ratio test requirements of section 7.7 of this appendix and section 2.2.5 of appendix B to this part.

* * * * *



* * * * *

53. Section 1 of Appendix B to Part 75 is amended by:

a. Adding a fourth sentence to section 1; and

b. Removing the word ''and'' before the words ''section 2.1.5.1'' in the second sentence of section 1.3.1.

The revisions and additions read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

1. Quality Assurance/Quality Control Program

* * * Electronic storage of the information in the QA/QC plan is permissible, provided that the information can be made available in hardcopy upon request during an audit.

* * * * *

54. Section 2 of Appendix B to Part 75 is amended by:

a. In paragraph (a) of section 2.1.4 by revising the words ''< 200 ppm'' in the first sentence to read ''> 50.0 ppm but ≤ 200 ppm, or exceeds 5.0 ppm for span values ≤ 50.0 ppm'';

b. In the first sentence of section 2.2.1 by revising the word ''Perform'' to read ''Unless a particular monitor (or monitoring range) is exempted under this paragraph or under section 6.2 of appendix A to this part, perform'';

c. In paragraph (c) of section 2.2.3 by adding a third sentence;

d. In the second sentence of paragraph (e) of section 2.2.3 by removing the words ''or SO_2-diluent'';

e. In the second sentence of paragraph (f) of section 2.2.3 by revising the words ''168 unit operating hour or stack operating hour grace period'' to read ''grace period of 168 cumulative unit or stack operating hours'';

f. In paragraph (a) of section 2.2.4 by revising both occurrences of the word ''consecutive'' to read ''cumulative'';

g. In the first sentence of paragraph (b) of section 2.2.4 by adding the word ''cumulative'' after the number ''168'' and the words ''first unit operating'' before the words ''hour following'';

h. In paragraph (a) of section 2.2.5 by removing the first sentence, revising the words ''by an approved petition in accordance with'' in the second sentence to read ''from the flow-to-load ratio test under'', and by adding a final sentence before Eq. B–1;

i. Revising the third sentence of paragraph (a)(1) of section 2.2.5;

j. In paragraph (a)(3) of section 2.2.5 by adding the word ''rate'' after the words ''heat input'';

k. In paragraph (a)(4) of section 2.2.5 by adding the word ''acceptable'' after each occurrence of the number ''168'', and by adding in the third sentence the words ''(i.e., at loads within ± 10 percent of L_{avg})'' after the word ''rates'';

l. Revising the last sentence of paragraph (b) of section 2.2.5;

m. Revising the introductory text of paragraph (c) of section 2.2.5;

n. Adding a new third sentence in paragraph (c)(1) of section 2.2.5;

o. In paragraph (c)(8) of section 2.2.5 by removing the second sentence and adding two new sentences in its place;

p. In the first sentence of the introductory paragraph to section 2.2.5.1 by revising the words ''two weeks'' to read ''14 unit operating days'';

q. Revising paragraph (b) of section 2.2.5.1;

r. Revising section 2.2.5.2;

s. Revising the second and third sentences of paragraph (a) of section 2.2.5.3;

t. In the second sentence of paragraph (b) of section 2.2.5.3 by changing the number ''5.0'' to ''10.0'';

u. In paragraph (c) of section 2.2.5.3 by adding the words ''(if applicable)'' after the words ''flow-to-load test'' in the second sentence and after the words ''flow monitor'' in the third sentence;

v. In the fourth sentence of paragraph (a) of section 2.3.1.1 by revising the words ''720 unit (or stack) operating hour grace period'' to read ''grace period of 720 cumulative unit or stack operating hours'';

w. Removing and reserving paragraph (b) of section 2.3.1.2;

x. Removing the words ''On and after January 1, 2000,'' and capitalizing the letter ''t'' in the first instance of ''the'' in paragraph (c) of section 2.3.1.2;

y. In paragraph (d) of section 2.3.1.2 by adding the words '', as measured by the reference method during the RATA'' after the words ''≤10.0 fps'' and by removing the words ''(10.0 percent if prior to January 1, 2000)'';

z. In paragraph (e) of section 2.3.1.2 by adding the words ''reference method'' before the word ''concentrations'', and by adding the words '') during the RATA'' after the words ''250 ppm'';

aa. In paragraph (f) of section 2.3.1.2 by adding the words ''measured by the reference method during the RATA'' after the words ''average NO_X emission rate'';

bb. Removing and reserving paragraph (g) of section 2.3.1.2;

cc. In section heading 2.3.1.3 by adding the words ''(or Operating)'' after the words ''RATA Load'';

dd. In paragraph (a) of section 2.3.1.3 by adding the words ''(or operating level)'' after each instance of the words ''load level'', adding the words ''(or operating levels)'' after the words ''load levels'', and by revising the words ''section 6.5.2.1'' to read ''section 6.5.2.1(d)'';

ee. In paragraph (b) of section 2.3.1.3 by revising the words ''section 6.5.2.1'' to read ''section 6.5.2.1(d)'';

ff. Revising paragraphs (c)(1) through (c)(6) of section 2.3.1.3;

gg. In paragraph (c) of section 2.3.2 by adding a new third sentence;

hh. In paragraphs (d) and (f) of section 2.3.2 by adding the words ''(or operating level)'' after each occurrence of the words ''load level'', the words ''(or single-level)'' after the word ''single-load'', the words ''(or multiple-level)'' after the word ''multiple-load'', the words ''(or operating level(s))'' after the words ''load level(s)'', and the words ''(or 3-level)'' after the words ''3-load'';

ii. Revising paragraph (e) of section 2.3.2;

jj. In paragraph (a) of section 2.3.3 by revising the first two instances of the word ''consecutive'' to read ''cumulative'', removing the word ''or'' after the first two semicolons, and by removing the words ''consecutive calendar'' after the word ''five'';

kk. In the first sentence of paragraph (c) of section 2.3.3 by adding the word ''cumulative'' after the number ''720'';

ll. Revising paragraph (b) of section 2.4;

mm. Revising footnote 2 of Figure 1 to Appendix B of Part 75; and

nn. In Figure 2 to Appendix B of Part 75 by removing the row for ''Flow (Phase I)'', renaming the row for ''Flow (Phase II)'' as ''Flow'', by revising the word ''H_2O_2'' in the final row to read ''H_2O^2'', and by adding the word ''cumulative'' after both occurrences of the number ''168'' in footnote 1 to Figure 2.

The revisions and additions read as follows:

2. Frequency of Testing

* * * * *

2.2 Quarterly Assessments

* * * * *

2.2.3 Data Validation

* * * * *

(c) * * * If a routine daily calibration error test is performed and passed just prior to a linearity test (or during a linearity test period) and a mathematical correction factor is automatically applied by the DAHS, the correction factor shall be applied to all subsequent data recorded by the monitor, including the linearity test data.

* * * * *

2.2.5 Flow-to-Load Ratio or Gross Heat Rate Evaluation

(a) *Applicability and methodology.* * * * Alternatively, for the reasons stated in paragraphs (c)(1) through (c)(6) of this section, the owner or operator may exclude from the data analysis certain hours within ± 10.0 percent of L_{avg} and may calculate R_h values for only the remaining hours. * * *

(1) * * * For a unit that discharges its emissions through multiple stacks or that monitors its emissions in multiple breechings, Q_h will be either the combined hourly volumetric flow rate for all of the stacks or ducts (if the test is done on a unit basis) or the hourly flow rate through each stack individually (if the test is performed separately for each stack). * * *

* * * * *

(b) * * * If E_f is above these limits, the owner or operator shall either: implement Option 1 in section 2.2.5.1 of this appendix; perform a RATA in accordance with Option 2 in section 2.2.5.2 of this appendix; or (if applicable) re-examine the hourly data used for the flow-to-load or GHR analysis and recalculate E_f, after excluding all non-representative hourly flow rates, as provided in paragraph (c) of this section.

(c) *Recalculation of E_f.* If the owner or operator did not exclude any hours within ±10 percent of L_{avg} from the original data analysis and chooses to recalculate E_f, the flow rates for the following hours are considered non-representative and may be excluded from the data analysis:

(1) * * * Also, for units that co-fire different types of fuels, if the reference RATA was done while co-firing, then hours in which a single fuel was combusted may be excluded from the data analysis as different fuel hours (and vice-versa for co-fired hours, if the reference RATA was done while combusting only one type of fuel);

* * * * *

(8) * * * If, however, E_f is still above the applicable limit, data from the monitor shall be declared out-of-control, beginning with the first unit operating hour following the quarter in which E_f exceeded the applicable limit. Alternatively, if a probationary calibration error test is performed and passed according to § 75.20(b)(3)(ii), data from the monitor may be declared conditionally valid following the quarter in which E_f exceeded the applicable limit. * * *

2.2.5.1 Option 1

* * * * *

(b) If a problem with the flow monitor is identified through the investigation (including the need to re-linearize the monitor by changing the polynomial coefficients or K factor(s)), data from the monitor are considered invalid back to the first unit operating hour after the end of the calendar quarter for which E_f was above the applicable limit. If the option to use conditional data validation was selected under section 2.2.5(c)(8) of this appendix, all conditionally valid data shall be invalidated, back to the first unit operating hour after the end of the calendar quarter for which E_f was above the applicable limit. Corrective actions shall be taken. All corrective actions (e.g., non-routine maintenance, repairs, major component replacements, re-linearization of the monitor, etc.) shall be documented in the operation and maintenance records for the monitor. The owner or operator then shall either complete the abbreviated flow-to-load test in section 2.2.5.3 of this appendix, or, if the corrective action taken has required relinearization of the flow monitor, shall perform a 3-load RATA. The conditional data validation procedures in § 75.20(b)(3) may be applied to the 3-load RATA.

2.2.5.2 Option 2

Perform a single-load RATA (at a load designated as normal under section 6.5.2.1 of

appendix A to this part) of each flow monitor for which E_f is outside of the applicable limit. If the RATA is passed hands-off, in accordance with section 2.3.2(c) of this appendix, no further action is required and the out-of-control period for the monitor ends at the date and hour of completion of a successful RATA, unless the option to use conditional data validation was selected under section 2.2.5(c)(8) of this appendix. In that case, all conditionally valid data from the monitor are considered to be quality-assured, back to the first unit operating hour following the end of the calendar quarter for which the E_f value was above the applicable limit. If the RATA is failed, all data from the monitor shall be invalidated, back to the first unit operating hour following the end of the calendar quarter for which the E_f value was above the applicable limit. Data from the monitor remain invalid until the required RATA has been passed. Alternatively, following a failed RATA and corrective actions, the conditional data validation procedures of § 75.20(b)(3) may be used until the RATA has been passed. If the corrective actions taken following the failed RATA included adjustment of the polynomial coefficients or K-factor(s) of the flow monitor, a 3-level RATA is required.

2.2.5.3 Abbreviated Flow-to-Load Test

(a) * * * Data from the monitoring system are considered invalid from the hour of commencement of the repair, replacement, or maintenance until either the hour in which the abbreviated flow-to-load test is passed, or the hour in which a probationary calibration error test is passed following completion of the repair, replacement, or maintenance and any associated adjustments to the monitor. If the latter option is selected, the abbreviated flow-to-load test shall be completed within 168 cumulative unit operating hours of the probationary calibration error test (or, for peaking units, within 30 unit operating days, if that is less restrictive). * * *

* * * * *

2.3 Semiannual and Annual Assessments

* * * * *

2.3.1 Relative Accuracy Test Audit (RATA)

* * * * *

2.3.1.3 RATA Load (or Operating) Levels and Additional RATA Requirements

* * * * *

(c) * * *

(1) An annual 2-load (or 2-level) flow RATA shall be done at the two most frequently used load levels (or operating levels), as determined under section 6.5.2.1(d) of appendix A to this part. Alternatively, a 3-load (or 3-level) flow RATA at the low, mid, and high load levels (or operating levels), as defined under section 6.5.2.1(b) of appendix A to this part, may be performed in lieu of the 2-load (or 2-level) annual RATA.

(2) If the flow monitor is on a semiannual RATA frequency, 2-load (or 2-level) flow RATAs and single-load (or single-level) flow RATAs at the normal load level (or normal operating level) may be performed alternately.

(3) A single-load (or single-level) annual flow RATA may be performed in lieu of the 2-load (or 2-level) RATA if the results of an historical load data analysis show that in the time period extending from the ending date of the last annual flow RATA to a date that is no more than 21 days prior to the date of the current annual flow RATA, the unit (or combination of units, for a common stack) has operated at a single load level (or operating level) (low, mid, or high), for ≥85.0 percent of the time. Alternatively, a flow monitor may qualify for a single-load (or single-level) RATA if the 85.0 percent criterion is met in the time period extending from the beginning of the quarter in which the last annual flow RATA was performed through the end of the calendar quarter preceding the quarter of current annual flow RATA.

(4) A 3-load (or 3-level) RATA, at the low-, mid-, and high-load levels (or operating levels), as determined under section 6.5.2.1 of appendix A to this part, shall be performed at least once every five consecutive calendar years.

(5) A 3-load (or 3-level) RATA is required whenever a flow monitor is re-linearized, i.e., when its polynomial coefficients or K factor(s) are changed, except for flow monitors installed on peaking units and bypass stacks. For peaking units and bypass stacks, a single-load RATA at the normal load is required.

(6) For all multi-level flow audits, the audit points at adjacent load levels or at adjacent operating levels (e.g., mid and high) shall be separated by no less than 25.0 percent of the ''range of operation,'' as defined in section 6.5.2.1 of appendix A to this part.

* * * * *

2.3.2 Data Validation

* * * * *

(c) * * * If a routine daily calibration error test is performed and passed just prior to a RATA (or during a RATA test period) and a mathematical correction factor is automatically applied by the DAHS, the correction factor shall be applied to all subsequent data recorded by the monitor, including the RATA test data. * * *

* * * * *

(e) For a RATA performed using the option in paragraph (b)(1) or (b)(2) of this section, if the RATA is failed (that is, if the relative accuracy exceeds the applicable specification in section 3.3 of appendix A to this part) or if the RATA is aborted prior to completion due to a problem with the CEMS, then the CEMS is out-of-control and all emission data from the CEMS are invalidated prospectively from the hour in which the RATA is failed or aborted. Data from the CEMS remain invalid until the hour of completion of a subsequent RATA that meets the applicable specification in section 3.3 of appendix A to this part. If the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through(b)(3)(ix) has been selected, the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B). Note that when a RATA is aborted for a reason other than monitoring system malfunction (see paragraph (h) of this section), this does not trigger an out-of-control period for the monitoring system.

* * * * *

2.4 Recertification, Quality Assurance, RATA Frequency and Bias Adjustment Factors (Special Considerations)

* * * * *

(b) Except as provided in section 2.3.3 of this appendix, whenever a passing RATA of a gas monitor is performed, or a passing 2-load (or 2-level) RATA or a passing 3-load (or 3-level) RATA of a flow monitor is performed (irrespective of whether the RATA is done to satisfy a recertification requirement or to meet the quality assurance requirements of this appendix, or both), the RATA frequency (semi-annual or annual) shall be established based upon the date and time of completion of the RATA and the relative accuracy percentage obtained. For 2-load (or 2-level) and 3-load (or 3-level) flow RATAs, use the highest percentage relative accuracy at any of the loads (or levels) to determine the RATA frequency. The results of a single-load (or single-level) flow RATA may be used to establish the RATA frequency when the single-load flow RATA is specifically required under section 2.3.1.3(b) of this appendix (for flow monitors installed on peaking units and bypass stacks) or when the single-load (or single-level) RATA is allowed under section 2.3.1.3(c) of this appendix for a unit that has operated at one load level (or operating level) for ≥ 85.0 percent of the time since the last annual flow RATA. No other single-load (or single-level) flow RATA may be used to establish an annual RATA frequency; however, a 2-load or 3-load (or a 2-level or 3-level) flow RATA may be performed at any time or in place of any required single-load (or single-level) RATA, in order to establish an annual RATA frequency.

* * * * *

Figure 1 to Appendix B of Part 75—Quality Assurance Test Requirements

* * * * *

[2] For flow monitors installed on peaking units and bypass stacks, conduct all RATAs at a single, normal load. For other flow monitors, conduct annual RATAs at two load levels (or operating levels). Alternating single-level and 2-level RATAs may be done if a monitor is on a semiannual frequency. A single-level RATA may be done in lieu of a 2-level RATA if, since the last annual flow RATA, the unit has operated at one load level (or operating level) for ≥ 85.0 percent of the time. A 3-level RATA is required at least once every five calendar years and whenever a flow monitor is re-linearized.

* * * * *

55. Appendix C to Part 75 is amended by:

a. Revising the section heading of section 2;

b. Revising the fifth sentence in section 2.2.1 and adding a new sentence after that fifth sentence;

c. Revising in section 2.2.3.9 the reference ''75.51(a)(2)'' to read ''75.71(a)(2)''; and

d. Adding new sections 3 and 4.

The revisions and additions read as follows:

Appendix C to Part 75—Missing Data Estimation Procedures

* * * * *

2. Load-Based Procedure for Missing Flow Rate, NO_X Concentration, and NO_X Emission Rate Data

* * * * *

2.2 Procedure

2.2.1 * * * For a cogenerating unit or other unit at which some portion of the heat input is not used to produce electricity or for a unit for which hourly average gross load in MWge is not recorded separately, determine the maximum hourly average gross load for the unit by converting the maximum rated hourly unit heat input (including heat input from auxiliary firing, if applicable) to an equivalent gross megawatt value, using the percentage efficiencies of the main combustion source and (if applicable) any auxiliary combustion sources. If the actual percentage efficiency of a particular combustion source is unknown, use a default value of 50 percent for a combustion turbine and 33 percent for any other type of combustion source. * * *

* * * * *

3. Non-Load-Based Procedure for Missing Flow Rate, NO_X Concentration, and NO_X Emission Rate Data (Optional)

3.1 Applicability

For affected units that do not produce electrical output in megawatts or thermal output in klb/hr of steam, this procedure may be used in accordance with the provisions of this part to provide substitute data for volumetric flow rate (scfh), NO_X emission rate (in lb/mmBtu) from NO_X-diluent continuous emission monitoring systems, and NO_X concentration data (in ppm) from NO_X concentration monitoring systems used to determine NO_X mass emissions.

3.2 Procedure

3.2.1 For each monitored parameter (flow rate, NO_X emission rate, or NO_X concentration), establish at least two, but no more than ten operational bins, corresponding to various operating conditions and parameters (or combinations of these) that affect volumetric flow rate or NO_X emissions. Include a complete description of each operational bin in the hardcopy portion of the monitoring plan required under § 75.53(e)(2), identifying the unique combination of parameters and operating conditions associated with the bin and explaining the relationship between these parameters and conditions and the magnitude of the stack gas flow rate or NO_X emissions. Assign a unique number, 1 through 10, to each operational bin. Examples of conditions and parameters that may be used to define operational bins include unit heat input, type of fuel combusted, specific stages of an industrial process, or (for common stacks), the particular combination of units that are in operation.

3.2.2 In the electronic quarterly report required under § 75.64, indicate for each hour of unit operation the operational bin associated with the NO_X or flow rate data, by recording the number assigned to the bin under section 3.2.1 of this appendix.

3.2.3 The data acquisition and handling system must be capable of properly identifying and recording the operational bin number for each unit operating hour. The DAHS must also be capable of calculating and recording the following information for each unit operating hour of missing flow or NO_X data within each identified operational bin during the shorter of: (a) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (b) all previous quality assured monitor operating hours:

3.2.3.1 Average of the hourly flow rates reported by a flow monitor (scfh).

3.2.3.2 The 90th percentile value of hourly flow rates (scfh).

3.2.3.3 The 95th percentile value of hourly flow rates (scfh).

3.2.3.4 The maximum value of hourly flow rates (scfh).

3.2.3.5 Average of the hourly NO_X emission rate, in lb/mmBtu, reported by a NO_X-diluent continuous emission monitoring system.

3.2.3.6 The 90th percentile value of hourly NO_X emission rates (lb/mmBtu).

3.2.3.7 The 95th percentile value of hourly NO_X emission rates (lb/mmBtu).

3.2.3.8 The maximum value of hourly NO_X emission rates, in (lb/mmBtu).

3.2.3.9 Average of the hourly NO_X pollutant concentrations (ppm), reported by a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.51(a)(2).

3.2.3.10 The 90th percentile value of hourly NO_X pollutant concentration (ppm).

3.2.3.11 The 95th percentile value of hourly NO_X pollutant concentration (ppm).

3.2.3.12 The maximum value of hourly NO_X pollutant concentration (ppm).

3.2.4 When a bias adjustment is necessary for the flow monitor and/or the NO_X-diluent continuous emission monitoring system (and/or the NO_X concentration monitoring system), apply the bias adjustment factor to all data values placed in the operational bins.

3.2.5 Calculate all CEMS data averages, maximum values, and percentile values determined by this procedure using bias-adjusted values.

3.2.6 Use the calculated monitor or monitoring system data averages, maximum values, and percentile values to substitute for missing flow rate and NO_X emission rate data (and where applicable, NO_X concentration data) according to the procedures in subpart D of this part.

4. Non-Load-Based Procedure for Missing Fuel Flowmeter Data (Optional)

4.1 Applicability

For affected units that do not produce electrical output in megawatts or thermal output in klb/hr of steam, this procedure may be used in accordance with the provisions of this part to provide substitute data for fuel flow rate.

4.2 Procedure

4.2.1 Establish at least two, but no more than ten operational bins, corresponding to various operating conditions and parameters (or combinations of these) related to the fuel flow rate. Include a complete description of each operational bin in the hardcopy portion of the monitoring plan required under § 75.53(f)(1)(ii), identifying the parameters and operating conditions associated with the bin and explaining the relationship between these parameters and conditions and the magnitude of the fuel flow rate. Assign a unique number, 1 through 10, to each operational bin.

4.2.2 In the electronic quarterly report required under § 75.64, indicate for each hour of unit operation the operational bin associated with the fuel flow rate data, by recording the number assigned to the bin under section 4.2.1 of this appendix.

4.2.3 The data acquisition and handling system (DAHS) must be capable of properly identifying and recording the operational bin number for each unit operating hour. The DAHS must also be capable of calculating and recording the following information for each unit operating hour of missing fuel flow rate data within each identified operational bin during the previous 720 operating hours (on a rolling basis):

4.2.3.1 Arithmetic average of the hourly fuel flow rates reported by a certified fuel flowmeter system, in appropriate units of fuel flow rate.

4.2.3.2 The maximum value of hourly fuel flow rates reported by a certified fuel flowmeter system, in appropriate units of fuel flow rate.

4.2.4 The DAHS shall also be capable of separating the recorded fuel flow rate data on the basis of the type of fuel combusted in the unit. A separate database shall be created and maintained for each type of fuel when it is combusted alone in the unit. If different types of fuel are co-fired in the unit, an additional database shall be created and maintained for each type of fuel, for hours in which it is co-fired with any other type(s) of fuel(s).

4.3 Use the calculated average and maximum values to substitute for missing fuel flow rate data according to the applicable procedures in sections 2.4.2 and 2.4.3 in appendix D to this part.

Appendix D Section 1 [Amended].

56. Section 1 of Appendix D to Part 75 is amended by removing the final sentence of section 1.2.

57. Section 2 of Appendix D to Part 75 is amended by:

a. Revising sections 2.1.2, 2.1.2.1, and 2.1.2.2;

b. Revising the first sentence of section 2.1.4.1;

c. Revising section 2.1.4.3;

d. In section 2.1.5 by revising the words ''calibrated fuel flow rate'' to read ''fuel flow rate measurable by the flowmeter'' in the first sentence, by adding the words ''(orifice, nozzle, and venturi-type flowmeters, only)'' after the words ''by design'' in the second

sentence, and by revising the words ''measurement against a NIST-traceable reference method'' in the third sentence to read ''in-line comparison against a reference flowmeter'';

e. In section 2.1.5.4 by revising the words ''using the following'' to read ''in a manner consistent with'';

f. In paragraph (c) of section 2.1.6 by removing the words ''2.1.5.1 or'';

g. In paragraph (d) of section 2.1.6 by removing the words '', where applicable,'' before the words ''those procedures'' and '', where applicable'' after the second occurrence of the words ''element inspection'', and by adding ''(if applicable)'' after both occurrences of the words ''test or'';

h. Adding new paragraphs (e) and (f) to section 2.1.6;

i. In the second sentence of paragraph (a) of section 2.1.6.1 by adding the word ''upscale'' after the word ''other'' and by adding a new third sentence;

j. In section heading 2.1.6.2 by revising the words ''and Reporting of'' to read ''for'';

k. In paragraph (a) of section 2.1.6.2 by removing the second and third sentences;

l. Removing and reserving sections 2.1.6.2(b) and 2.1.6.2(c);

m. In the final sentence of section 2.1.6.3 by removing the words ''§ 75.56 or'' and '', as applicable'';

n. In the fourth sentence of paragraph (a) of section 2.1.6.4 by revising the words ''indicates that'' to read ''is failed (if'' and by adding a closing parenthesis after the word ''corroded'';

o. In paragraph (a)(1) of section 2.1.6.4 by adding a new second sentence;

p. In paragraphs (a)(2) and (b)(2) of section 2.1.6.4 by revising the word ''under'' to read '', using'';

q. In paragraph (b) of section 2.1.6.4 by removing the first sentence;

r. In paragraph (b)(1) of section 2.1.6.4 by adding the words ''and, if applicable, the transmitters have been successfully recalibrated'' to the end of the final sentence;

s. In paragraph (c) of section 2.1.6.4 by revising the words ''this period'' to read ''each period of invalid fuel flowmeter data described in paragraph (b) of this section'';

t. In section 2.1.7 by removing each occurrence of the words ''where applicable,'' and ''as applicable,'', by removing the words ''§ 75.54(a) or'', and by adding the words ''(if applicable) a'' and ''(if applicable)'' after the two occurrences of ''test or'', respectively;

u. In paragraph (a) of section 2.1.7.1 by revising the first occurrence of ''i.e.'' to read ''e.g.'', by revising the sixth sentence, and by adding the word ''Arithmetic'' before the word ''average'' in the definitions of the variables ''Q_{base}'' and ''L_{avg}'' under Eq. D–1b;

v. Revising paragraph (b) of section 2.1.7.1;

w. In paragraph (c) of section 2.1.7.1 by adding the words ''average fuel flow rate and the fuel GCV in the'' before the word ''applicable'' in the definition of the variable ''$(\text{Heat Input})_{avg}$'' under Eq. D–1c;

x. In paragraph (a) of section 2.1.7.2 by adding a new third sentence;

y. Revising paragraph (b) of section 2.1.7.2;

z. In the variable for ''$(\text{Heat Input})_h$'' under Eq. D–1e in paragraph (c) of section 2.1.7.2 by adding the words ''hourly fuel flow rate and the fuel GCV in the'' after the words ''using the'';

aa. In paragraph (d) of section 2.1.7.2 by revising the third sentence and by adding a new fourth sentence;

bb. Revising the first sentence of paragraph (a) of section 2.1.7.3;

cc. Adding a second sentence to paragraph (b) of section 2.1.7.3;

dd. In the first sentence of paragraph (a) of section 2.1.7.4 by revising the reference to ''section 2.1.7.2'' to read ''section 2.1.7.2(h)'';

ee. In the final sentence of paragraph (b) of section 2.1.7.4 by adding the word ''fuel'' after the word ''two'' and by adding the words ''(as defined in § 72.2 of this chapter)'' after the word ''quarters'';

ff. Revising Table D–4 in section 2.2;

gg. In section 2.2.4.2 introductory text by adding the words ''and GCV value'' after the words ''Use the sulfur content'' in the fourth sentence, and by revising the reference to ''section 2.2.4.3'' to read ''section 2.2.4.3(c)'';

hh. Revising paragraph (b) of section 2.2.4.2;

ii. In the second sentence of paragraph (c) of section 2.2.4.3 by revising the first and second occurrences of the words ''two following values'' with, respectively, the words ''following conservative, assumed values'' and ''assumed values'';

jj. Revising paragraph (d) of section 2.2.4.3;

kk. Revising Table D–5 in section 2.3(b);

ll. Revising all of section 2.3.1.4 except for the section heading and paragraph (a)(1);

mm. In section 2.3.2.1.1 by adding a new second sentence and by revising Equation D–1h and the definitions of variables for Equation D–1h;

nn. Revising sections 2.3.2.1.2 and 2.3.2.4;

oo. In section 2.3.3.2 by revising the third sentence and adding a new fourth sentence;

pp. In section 2.3.4.3 by adding a new second sentence;

qq. Revising the fourth sentence of section 2.3.4.3.1;

rr. Revising section 2.3.4.3.2 and paragraph (a) of section 2.3.5;

ss. In paragraph (a) of section 2.3.6 by revising the first, second, fourth, and fifth sentences and by adding a new sentence after the second sentence;

tt. In the first sentence of paragraph (b) of section 2.3.6 by removing the words ''(and hydrogen sulfide content, if applicable)'';

uu. In the first sentence of section 2.4.1 by removing the reference ''2.3.3.1.2,'';

vv. Revising Table D–6 in section 2.4.1 and sections 2.4.2, 2.4.2.1(b) and heading, 2.4.2.2, and 2.4.2.3; and

ww. In section 2.4.3 by adding a new sentence to the end of that section.

The revisions and additions read as follows:

2. Procedure

2.1 Fuel Flowmeter Measurements

* * * * *

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (as defined in § 72.2 of this chapter). However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of this appendix shall not apply to any unit that is using the provisions of subpart H of this part to monitor, record, and report NO_X mass emissions under a state or federal NO_X mass emission reduction program, unless both of the following are true: all of the units served by the common pipe are affected units, and all of the units have similar efficiencies. For the purposes of this section, units served by a common pipe have similar efficiencies (e.g., if all of the units are boilers or if all of the units are combustion turbines). When a fuel flowmeter is installed in a common pipe header, proceed as follows:

2.1.2.1 Measure the fuel flow rate in the common pipe, and combine SO_2 mass emissions (Acid Rain Program units only) for the affected units for recordkeeping and compliance purposes; and

2.1.2.2 Apportion the heat input rate measured at the common pipe to the individual units, using Equation F–21a, F–21b, or F–21d in appendix F to this part.

* * * * *

2.1.4 Situations in Which Certified Flowmeter Is Not Required

2.1.4.1 Start-up or Ignition Fuel

For an oil-fired unit that uses gas solely for start-up or burner ignition, a gas-fired unit that uses oil solely for start-up or burner ignition, or an oil-fired unit that uses a different grade of oil solely for start-up or burner ignition, a fuel flowmeter for the start-up fuel is permitted but not required. * * *

* * * * *

2.1.4.3 Emergency Fuel

The designated representative of a unit that is restricted by a federally-enforceable permit

to combusting a particular fuel only during emergencies where the primary fuel is not available is exempt from certifying a fuel flowmeter for use during combustion of the emergency fuel. During any hour in which the emergency fuel is combusted, report the hourly heat input to be the maximum rated heat input of the unit for the fuel. Use the maximum potential sulfur content for the fuel (from Table D–6 of this appendix) and the fuel flow rate corresponding to the maximum hourly heat input to calculate the hourly SO_2 mass emission rate, using Equations D–2 through D–4 of this appendix (as applicable). Alternatively, if a certified fuel flowmeter is available for the emergency fuel, you may use the measured hourly fuel flow rates in the calculations. Also, if daily samples or weekly composite samples (fuel oil, only) of the fuel's total sulfur content, GCV, and (if applicable) density are taken during the combustion of the emergency fuel, as described in section 2.2 or 2.3 of this appendix, the sample results may be used to calculate the hourly SO_2 emissions and heat input rates, in lieu of using maximum potential values. The designated representative shall also provide notice under § 75.61(a)(6) for each period when the emergency fuel is combusted.

* * * * *

2.1.6 Quality Assurance

* * * * *

(e) When accuracy testing of the orifice, nozzle, or venturi meter is performed according to section 2.1.5.2 of this appendix, record the information displayed in Table D–1 in this section. At a minimum, record the overall accuracy results for the fuel flowmeter at the three flow rate levels specified in section 2.1.5.2 of this appendix.

(f) Report the results of all fuel flowmeter accuracy tests, transmitter or transducer accuracy tests, and primary element inspections, as applicable, in the emissions report for the quarter in which the quality assurance tests are performed, using the electronic format specified by the Administrator under § 75.64.

2.1.6.1 Transmitter or Transducer Accuracy Test for Orifice-, Nozzle-, and Venturi-Type Flowmeters

(a) * * * For temperature transmitters, the zero and upscale levels may correspond to fixed reference points, such as the freezing point or boiling point of water.

* * * * *

2.1.6.4 Primary Element Inspection

(a) * * *

(1) * * * If the primary element size is changed, also calibrate the transmitters or transducers, consistent with the new primary element size;

* * * * *

2.1.7 Fuel Flow-to-Load Quality Assurance Testing for Certified Fuel Flowmeters

* * * * *

2.1.7.1 Baseline Flow Rate-to-Load Ratio or Heat Input-to-Load Ratio

(a) * * * For orifice-, nozzle-, and venturi-type fuel flowmeters, if the fuel flow-to-load ratio is to be used as a supplement both to the transmitter accuracy test under section 2.1.6.1 of this appendix and to primary element inspections under section 2.1.6.4 of this appendix, then the baseline data must be obtained after both procedures are completed and no later than the end of the fourth calendar quarter following the calendar quarter in which both procedures were completed. * * *

* * * * *

(b) In Equation D–1b, for a fuel flowmeter installed on a common pipe header, L_{avg} is the sum of the operating loads of all units that received fuel through the common pipe header during the baseline period, divided by the total number of hours of fuel flow rate data collected during the baseline period. For a unit that receives the same type of fuel through multiple pipes, Q_{base} is the sum of the fuel flow rates during the baseline period from all of the pipes, divided by the total number of hours of fuel flow rate data collected during the baseline period. Round off the value of R_{base} to the nearest tenth.

* * * * *

2.1.7.2 Data Preparation and Analysis

(a) * * * Alternatively, the owner or operator may exclude non-representative hours from the data analysis, as described in section 2.1.7.3 of this appendix, prior to calculating the values of R_h.

* * * * *

(b) For a fuel flowmeter installed on a common pipe header, L_h shall be the sum of the hourly operating loads of all units that receive fuel through the common pipe header. For a unit that receives the same type of fuel through multiple pipes, Q_h will be the sum of the fuel flow rates from all of the pipes. Round off each value of R_h to the nearest tenth.

* * * * *

(d) * * * If, for a particular fuel flowmeter, fewer than 168 hourly flow-to-load ratios (or GHR values) are available, or, if the baseline data collection period is still in progress at the end of the quarter and fewer than four calendar quarters have elapsed since the quarter in which the last successful fuel flowmeter accuracy test was performed, a flow-to-load (or GHR) evaluation is not required for that flowmeter for that calendar quarter. A one-quarter extension of the deadline for the next fuel flowmeter accuracy test may be claimed for a quarter in which there is insufficient hourly data available to analyze or a quarter that ends with the baseline data collection period still in progress.

* * * * *

2.1.7.3 Optional Data Exclusions

(a) If E_f is outside the limits in section 2.1.7.2(h) of this appendix, the owner or operator may re-examine the hourly fuel flow rate-to-load ratios (or GHRs) that were used for the data analysis and may identify and exclude fuel flow-to-load ratios or GHR values for any non-representative hours, provided that such data exclusions were not previously made under section 2.1.7.2(a) of this appendix. * * *

(b) * * * If fewer than 168 hourly fuel flow-to-load ratio or GHR values remain after the allowable data exclusions, a fuel flow-to-load ratio or GHR analysis is not required for that quarter, and a one-quarter extension of the fuel flowmeter accuracy test deadline may be claimed.

* * * * *

2.2 Oil Sampling and Analysis

* * * * *

TABLE D–4.—OIL SAMPLING METHODS AND SULFUR, DENSITY AND GROSS CALORIFIC VALUE USED IN CALCULATIONS

Parameter	Sampling technique/frequency	Value used in calculations
Oil Sulfur Content	Daily manual sampling	1. Highest sulfur content from previous 30 daily samples; or 2. Actual daily value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained.[1]
Oil Density	Daily manual sampling	1. Use the highest density from the previous 30 daily samples; or 2. Actual measured value.

TABLE D–4.—OIL SAMPLING METHODS AND SULFUR, DENSITY AND GROSS CALORIFIC VALUE USED IN CALCULATIONS—Continued

Parameter	Sampling technique/frequency	Value used in calculations
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained.[1]
Oil GCV	Daily manual sampling	1. Highest fuel GCV from the previous 30 daily samples; or 2. Actual measured value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained; [1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained.[1]

[1] Assumed values may only be used if sulfur content, gross calorific value, or density of each sample is no greater than the assumed value used to calculate emissions or heat input. If a higher sample value is obtained, use the results of that sample analysis as the new assumed value.

* * * * *

2.2.4 Manual Sampling

* * * * *

2.2.4.2 Sampling from a Unit's Storage Tank

* * * * *

(b) One of the conservative assumed values described in section 2.2.4.3(c) of this appendix. Follow the applicable provisions in section 2.2.4.3(d) of this appendix, regarding the use of assumed values.

2.2.4.3 Sampling from Each Delivery

* * * * *

(d) Continue using the assumed value(s), so long as the sample results do not exceed the assumed value(s). However, if the actual sampled sulfur content, gross calorific value, or density of an oil sample is greater than the assumed value for that parameter, then, beginning on the date of receipt of the results of the sample analysis, use the actual sampled value for sulfur content, gross calorific value, or density of fuel to calculate SO_2 mass emission rate or heat input rate. Consider the sampled value to be the new assumed sulfur content, gross calorific value, or density. Continue using this new assumed value to calculate SO_2 mass emission rate or heat input rate unless and until: it is superseded by a higher value from an oil sample; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

2.3 SO_2 Emissions from Combustion of Gaseous Fuels

* * * * *

TABLE D–5.—GAS SULFUR AND GCV VALUES USED IN CALCULATIONS FOR VARIOUS FUEL TYPES

Parameter	Fuel type and sampling frequency	Value used in calculations (except for missing data hours)
Gas Sulfur Content	Pipeline Natural Gas with total sulfur content less than or equal to 0.5 grains/100scf (when using the provisions of section 2.3.1 to determine SO_2 mass emissions)—Sample semiannually and whenever fuel composition changes significantly.	0.0006 lb/mmBtu.
	Natural Gas with total sulfur content less than or equal to 20.0 grains/100scf (when using the provisions of section 2.3.2 to determine SO_2 mass emissions)—Sample semiannually and whenever fuel composition changes significantly.	Default SO_2 emission rate calculated from Eq. D–1h, using either: 1. The fuel contract maximum total sulfur content, unless a higher value is obtained in a semiannual sample;[1] 2. The maximum total sulfur content from the previous year's samples, unless a higher value is obtained in a semiannual sample;[1] or 3. The actual total sulfur content from the most recent semiannual sample.

TABLE D–5.—GAS SULFUR AND GCV VALUES USED IN CALCULATIONS FOR VARIOUS FUEL TYPES—Continued

Parameter	Fuel type and sampling frequency	Value used in calculations (except for missing data hours)
	Any gaseous fuel delivered in shipments or lots—Sample each lot or shipment.	1. Actual total sulfur content from most recent shipment; 2. Highest total sulfur content from previous year's samples, unless a higher value is obtained in a sample;[1] or 3. Maximum total sulfur content value allowed by contract, unless a higher value is obtained in a sample.[1]
	Any gaseous fuel transmitted by pipeline and having a demonstrated ''low sulfur variability'' using the provisions of section 2.3.6—Sample daily.	1. Actual total sulfur content from daily sample; or 2. Highest total sulfur content from previous 30 daily samples.
	Any gaseous fuel—Sample hourly	Actual hourly total sulfur content of the gas.
Gas GCV	Pipeline Natural Gas—Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); 2. Maximum GCV from contract, unless a higher value is obtained in a monthly sample;[1] or 3. Highest GCV from previous year's samples, unless a higher value is obtained in a monthly sample.[1]
	Natural Gas—Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); 2. Maximum GCV from contract;[1] or 3. Highest GCV from previous year's samples.[1]
	Any gaseous fuel delivered in shipments or lots—Sample each lot or shipment.	1. Actual GCV from most recent shipment or lot; 2. Highest GCV from previous year's samples, unless a higher value is obtained in a sample;[1] or 3. Maximum GCV value allowed by contract, unless a higher value is obtained in a sample.[1]
	Any gaseous fuel transmitted by pipeline and having a demonstrated ''low GCV variability'' using the provisions of section 2.3.5—Sample monthly.	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); or 2. Highest GCV from previous year's samples, unless a higher value is obtained in a monthly sample.[1]
	Any other gaseous fuel not having a ''low GCV variability''—Sample daily or hourly. (Note that the use of an on-line GCV calorimeter or gas chromatograph is allowed).	Actual daily or hourly GCV of the gas.

[1] Assumed sulfur content and GCV values (i.e., contract values or highest values from previous year) may only continue to be used if the sulfur content or GCV of each sample is no greater than the assumed value used to calculate SO_2 emissions or heat input. If a higher sample value is obtained, use the results of that sample analysis as the new assumed value.

2.3.1 Pipeline Natural Gas Combustion

* * * * *

2.3.1.4 Documentation that a Fuel is Pipeline Natural Gas

(a) A fuel may initially qualify as pipeline natural gas, if information is provided in the monitoring plan required under § 75.53, demonstrating that the definition of pipeline natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel meets either the percent methane or GCV requirement and has a total sulfur content of less than or equal to 0.5 grains/100scf. The demonstration must be made using one of the following sources of information:

* * * * *

(2) The results of all available fuel sample analyses from the past 12 months, documenting the total sulfur content of the fuel and the percentage by weight of methane and/or GCV of the fuel. The fuel samples may be obtained and analyzed by the owner or operator, by an independent laboratory, or by the supplier of the gaseous fuel;

(3) Data from a 720-hour demonstration conducted using the procedures of sections 2.3.5 and 2.3.6 of this appendix, documenting the total sulfur content of the fuel and the percentage by weight of methane and/or the GCV of the fuel, and using comparable procedures to document the percentage by weight of methane; or

(4) If historical fuel sampling results or data from a 720-hour demonstration are not available, a fuel may initially qualify as pipeline natural gas if a sample of the fuel is obtained and analyzed for total sulfur content and for percent methane or GCV, and if the results of the sample analysis show that the total sulfur content and percentage methane or GCV meet the definition of pipeline natural gas in § 72.2 of this chapter.

(b) After a fuel initially qualifies as pipeline natural gas under paragraph (a) of this section, the owner or operator shall sample the fuel for total sulfur content at least semiannually and whenever it is reasonable to believe that the fuel composition has changed significantly. The owner or operator shall also sample the GCV of the fuel at the frequency specified in section 2.3.4.1 of this appendix.

(c) If the results of a sample under paragraph (b) of this section show that the total sulfur content of the fuel exceeds 0.5gr/100 scf, the fuel no longer qualifies as pipeline natural gas. When this occurs:

(1) If the sample results show that the fuel still qualifies as natural gas under section 2.3.2.4 of this appendix, discontinue using the 0.0006 lb/mmBtu default SO_2 emission rate under 2.3.1.1, as of the date on which the sample results are received. Determine a new default SO_2 emission rate according to section 2.3.2.1.1 of this appendix and use the new SO_2 emission rate, beginning with the date of receipt of the sample results; or

(2) If the sample results show that the fuel no longer qualifies either as pipeline natural gas or natural gas, the owner or operator shall implement the procedures of section 2.3.3.1 of this appendix (for sulfur content determination) and section 2.3.4.3 of this appendix (for GCV determination), no later than 90 days after the end of the quarter in which the sample results are received.

2.3.2 Natural Gas Combustion

* * * * *

2.3.2.1 SO_2 Emission Rate

* * * * *

2.3.2.1.1 * * * In Equation D–1h, the total sulfur content and GCV values shall be determined in accordance with the allowable options shown in Table D–5 of this appendix.

* * *

$$ER = \left[\frac{2.0}{7000}\right] \times \left[10^6\right] \times \left[\frac{S_{total}}{GCV}\right] \qquad \text{(Eq. D-1h)}$$

Where:

ER = Default SO_2 emission rate for natural gas combustion, lb/mmBtu.

S_{total} = Total sulfur content of the natural gas, gr/100scf.

GCV = Gross calorific value of the natural gas, Btu/100scf.

7000 = Conversion of grains/100scf to lb/100scf.

2.0 = Ratio of lb SO_2/lb S.

10^6 = Conversion factor (Btu/mmBtu).

2.3.2.1.2 For reporting purposes, apply the results of the required periodic fuel samples described in Table D–5 of this appendix as follows. Use Equation D–1h to recalculate the SO_2 emission rate, as necessary.

(a) For daily samples of total sulfur content or GCV:

(1) If the actual value is to be used in the calculations, apply the results of each daily sample to all hours in the day on which the sample is taken; or

(2) If the highest value in the previous 30 daily samples is to be used in the calculations, apply that value to all hours in the current day. If, for a particular unit, fewer than 30 daily samples have been collected, use the highest value from all available samples until 30 days of historical sampling results have been obtained.

(b) For semiannual samples of total sulfur content:

(1) If the actual value is to be used in the calculations, apply the results of the most recent sample, until the date on which the results of the next sample are received; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value to all hours in the quarter unless a higher value is obtained in a semiannual fuel sample. In that case, use the sampled value, beginning with the date of receipt of the sample results. Consider the sample results to be the new assumed value. Continue using the new assumed value unless and until it is superseded by a higher value from a subsequent quarterly sample; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

(c) For monthly samples of the fuel GCV:

(1) If the actual value is to be used in the calculations, apply the results of the most recent sample, until the date on which the results of the next sample are received; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value to all hours in each month of the quarter unless a higher value is obtained in a monthly GCV sample. In that case, use the sampled value, beginning with the date of receipt of the sample results. Consider the sample results to be the new assumed value. Continue using the new assumed value unless and until it is superseded by a higher value from a subsequent monthly sample; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

(d) For samples of gaseous fuel delivered in shipments or lots:

(1) If the actual value for the most recent shipment is to be used in the calculations, apply the results of the most recent sample, until the date on which the results of the next sample are received; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value unless a higher value is obtained in a sample of a shipment. In that case, use the sampled value, beginning with the date of receipt of the sample results. Consider the sample results to be the new assumed value. Continue using the new assumed value unless and until: it is superseded by a higher value from a sample of a subsequent shipment; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

* * * * *

2.3.2.4 Documentation that a Fuel is a Natural Gas

(a) A fuel may initially qualify as natural gas if information is provided in the monitoring plan required under § 75.53, demonstrating that the definition of natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel meets either the percent methane or GCV requirement and has a total sulfur content of less than or equal to 20.0 grains/100 scf. This demonstration must be made using one of the following sources of information:

(1) The gas quality characteristics specified by a purchase contract or by a transportation contract;

(2) The results of all available fuel sample analyses from the past 12 months, documenting the total sulfur content of the fuel and the percentage by weight of methane and/or GCV of the fuel. The fuel samples may be obtained and analyzed by the owner or operator, by an independent laboratory, or by the supplier of the gaseous fuel;

(3) Data from a 720-hour demonstration conducted using the procedures of section 2.3.6 of this appendix, documenting the total sulfur content of the fuel and the percentage by weight of methane and/or the GCV of the fuel, and using comparable procedures to document the percentage by weight of methane; or

(4) If historical fuel sampling results or data from a 720-hour demonstration are not available, a fuel may initially qualify as natural gas if a sample of the fuel is obtained and analyzed for total sulfur content and for percent methane or GCV, and if the results of the sample analyses show that the total sulfur content and percentage methane or GCV meet the definition of natural gas in § 72.2 of this chapter.

(b) After a fuel initially qualifies as natural gas under paragraph (a) of this section, the owner or operator shall sample the fuel for total sulfur content at least semiannually and whenever it is reasonable to believe that the fuel composition has changed significantly. The owner or operator shall also sample the GCV of the fuel at the frequency specified in section 2.3.4.2 of this appendix.

(c) If the results of a periodic sample required under paragraph (b) of this section show that the total sulfur content of the fuel exceeds 20.0 gr/100 scf, the fuel no longer qualifies as natural gas. In that case, the owner or operator shall implement the procedures of section 2.3.3.1 of this appendix (for sulfur content determination) and section 2.3.4.3 of this appendix (for GCV determination), no later than 90 days after the end of the quarter in which the sample results are received.

2.3.3 SO_2 Mass Emissions From Any Gaseous Fuel

* * * * *

2.3.3.2 SO_2 Mass Emission Rate

* * * That is, for fuels delivered by pipeline which demonstrate a low sulfur variability (under section 2.3.6 of this appendix) use either the daily sample value or the highest value in the previous 30 daily samples or for fuels requiring hourly sulfur content sampling with a gas chromatograph use the actual hourly sulfur content). For fuels delivered in shipments or lots, use either the actual sulfur content from the most recent shipment or an assumed value (contract maximum or highest value from the previous year's samples). In all cases, for reporting purposes, apply the results of the required periodic total sulfur samples in accordance with the provisions of section 2.3.2.1.2 of this appendix.

* * * * *

2.3.4 Gross Calorific Values for Gaseous Fuels

* * * * *

2.3.4.3 GCV of Other Gaseous Fuels

* * * For reporting purposes, apply the results of the required periodic GCV samples in accordance with the provisions of section 2.3.2.1.2 of this appendix.

2.3.4.3.1 * * * For sampling from the tank after each delivery, use either the most recent GCV sample, the maximum GCV specified in the fuel contract, or the highest GCV from the previous year's samples.

2.3.4.3.2 For any gaseous fuel that does not qualify as pipeline natural gas or natural gas, which is not delivered in shipments or lots, and which performs the required 720 hour test under section 2.3.5 of this appendix, if the results of the test demonstrate that the gaseous fuel has a low GCV variability, determine the GCV at least monthly. In calculations of hourly heat input for a unit, use either the most recent monthly sample, the maximum GCV specified in the fuel contract, or the highest fuel GCV from the previous year's samples.

* * * * *

2.3.5 Demonstration of Fuel GCV Variability

(a) This optional demonstration may be made for any fuel which does not qualify as pipeline natural gas or natural gas, and is not delivered only in shipments or lots. The demonstration data may be used to show that monthly sampling of the GCV of the gaseous fuel or blend is sufficient, in lieu of daily GCV sampling. The procedures in this section may also be used to demonstrate that the GCV of a particular gaseous fuel is within the range of GCV values for pipeline natural gas or natural gas, as defined in § 72.2 of this chapter.

* * * * *

2.3.6 Demonstration of Fuel Sulfur Variability

(a) This optional demonstration may be made for any fuel which does not qualify as pipeline natural gas or natural gas, and is not delivered only in shipments or lots. The results of the demonstration may be used to show that daily sampling for sulfur in the fuel is sufficient, rather than hourly sampling. The procedures in this section may also be used to demonstrate that the total sulfur content of a particular gaseous fuel is within the limits for pipeline natural gas or natural gas, as defined in § 72.2 of this chapter. * * * Provide a minimum of 720 hours of data, indicating the total sulfur content of the gaseous fuel or blend (in gr/100 scf). The demonstration data shall be obtained using either manual hourly sampling or an on-line gas chromatograph capable of determining fuel total sulfur content on an hourly basis. * * *

* * * * *

2.4 Missing Data Procedures

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2.4.1 Missing Data for Oil and Gas Samples

* * * * *

TABLE D–6.—MISSING DATA SUBSTITUTION PROCEDURES FOR SULFUR, DENSITY, AND GROSS CALORIFIC VALUE DATA

Parameter	Missing data substitution maximum potential value
Oil Sulfur Content	3.5 percent for residual oil, or 1.0 percent for diesel fuel.
Oil Density	8.5 lb/gal for residual oil, or 7.4 lb/gal for diesel fuel.
Oil GCV	19,500 Btu/lb for residual oil, or 20,000 Btu/lb for diesel fuel.
Gas Total Sulfur Content	1. 0.002 lb/mmBtu for pipeline natural gas; 2. For natural gas for which semiannual sampling is performed, a default emission rate calculated from Equation D–1h, using the lesser of: (a) The maximum total sulfur content specified in the fuel contract; or (b) 1.5 times the highest total sulfur content from the previous year's samples; 3. For any gaseous fuel sampled daily, 1.5 times the highest total sulfur content value from the previous 30 days on which valid samples were obtained; or 4. For any gaseous fuel sampled hourly, the highest total sulfur content value from the previous 720 hourly samples
Gas GCV/Heat Content	1100 Btu/scf for pipeline natural gas, natural gas or landfill gas. 1500 for butane or refinery gas. 2100 Btu/scf for propane or any other gaseous fuel.

2.4.2 *Missing Data Procedures for Fuel Flow Rate.* Whenever data are missing from any primary fuel flowmeter system (as defined in § 72.2 of this chapter) and there is no backup system available to record the fuel flow rate, use the procedures in sections 2.4.2.2 and 2.4.2.3 of this appendix to account for the flow rate of fuel combusted at the unit for each hour during the missing data period. Alternatively, for a fuel flowmeter system used to measure the fuel combusted by a peaking unit, the simplified fuel flow missing data procedure in section 2.4.2.1 of this appendix may be used. Before using the procedures in sections 2.4.2.2 and 2.4.2.3 of this appendix, establish load ranges for the unit using the procedures of section 2 in appendix C to this part, except for units that do not produce electrical output (megawatts) or thermal output (e.g., klb of steam per hour). The owner or operator of a unit that does not produce electrical or thermal output may either establish operational bins for the unit, as described in section 4 of appendix C to this part, or may perform missing data substitution without segregating the fuel flow rate data into bins. When load ranges or operational bins are used for fuel flow rate missing data purposes, separate, fuel-specific databases shall be created and maintained. A database shall be kept for each type of fuel combusted in the unit, for the hours in which the fuel is combusted alone in the unit. An additional database shall be kept for each type of fuel, for the hours in which it is co-fired with any other type(s) of fuel(s).

2.4.2.1 Simplified Fuel Flow Rate Missing Data Procedure for Peaking Units * * *

(b) The maximum flow rate that the fuel flowmeter can measure (i.e, the upper range value of the flowmeter).

2.4.2.2 *Missing Data Procedures for Non-peaking Units—Single Fuel Hours.* For missing data periods that occur when only one type of fuel is being combusted, provide substitute data for each hour in the missing data period as follows.

2.4.2.2.1 If load-based missing data procedures are used, substitute the arithmetic average of the hourly fuel flow rate(s) measured and recorded by a certified fuel flowmeter system at the corresponding operating unit load range during the previous 720 operating hours in which the unit combusted only that same fuel. If no fuel flow rate data are available at the corresponding load range, apply the same mathematical algorithm to, and use the same lookback period for, the data from the next higher load range, if such data are available. If no quality-assured fuel flow rate data are available at either the corresponding load range or a higher load range, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.2.2 For units that do not produce electrical or thermal output and therefore cannot use load-based missing data procedures, provide substitute data for each hour of the missing data period as follows.

2.4.2.2.2.1 If operational bins (as defined in section 4 of appendix C to this part) are used, substitute the arithmetic average of the hourly fuel flow rates measured and recorded by a certified fuel flowmeter system at the corresponding operational bin during the previous 720 operating hours in which the unit combusted only that same fuel. If no quality-assured fuel flow rate data are available at the corresponding operational bin, or, if essential operating or parametric data are unavailable and the operational bin cannot be determined, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.2.2.2 If operational bins are not used, substitute the arithmetic average of the hourly fuel flow rates measured and recorded by a certified fuel flowmeter system during the previous 720 operating hours in which the unit combusted only that same fuel. If no quality-assured fuel flow rate data are available, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1

of this appendix) for each hour of the missing data period.

2.4.2.3 *Missing Data Procedures for Non-peaking Units—Multiple Fuel Hours.* For missing data periods that occur when two or more different types of fuel are being co-fired, provide substitute fuel flow rate data for each hour of the missing data period as follows.

2.4.2.3.1 If load-based missing data procedures are used, substitute the maximum hourly fuel flow rate measured and recorded by a certified fuel flowmeter system at the corresponding load range during the previous 720 operating hours when the fuel for which the flow rate data are missing was co-fired with any other type of fuel. If no such quality-assured fuel flow rate data are available at the corresponding load range, apply the same mathematical algorithm to, and use the same lookback period for, the data from the next higher load range (if available). If no quality-assured fuel flow rate data are available for co-fired hours, either at the corresponding load range or a higher load range, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3.2 For units that do not produce electrical or thermal output and therefore cannot use load-based missing data procedures, provide substitute fuel flow rate data for each hour of the missing data period as follows.

2.4.2.3.2.1 If operational bins (as defined in section 4 of appendix C to this part) are used, substitute the maximum hourly fuel flow rate measured and recorded by a certified fuel flowmeter system at the corresponding operational bin, during the previous 720 operating hours in which the unit for which the flow rate data are missing was co-fired with any other type of fuel. If no quality-assured fuel flow rate data for co-fired hours are available at the corresponding operational bin, or, if essential operating or parametric data are unavailable and the operational bin cannot be determined, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3.2.2 If operational bins are not used, substitute the maximum hourly fuel flow rate measured and recorded by a certified fuel flowmeter system during the previous 720 operating hours in which the fuel for which the flow rate data are missing was co-fired with any other type of fuel. If no quality-assured fuel flow rate data for co-fired hours are available, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3.3 If, during an hour in which different types of fuel are co-fired, quality-assured fuel flow rate data are missing for two or more of the fuels being combusted, apply the procedures in section 2.4.2.3.1 or 2.4.2.3.2 of this appendix (as applicable) separately for each type of fuel.

2.4.2.3.4 If the missing data substitution required in section 2.4.2.3.1 or 2.4.2.3.2 causes the reported hourly heat input rate based on the combined fuel usage to exceed the maximum rated hourly heat input of the unit, adjust the substitute fuel flow rate value(s) so that the reported heat input rate equals the unit's maximum rated hourly heat input. Manual entry of the adjusted substitute data values is permitted.

2.4.3 * * * In addition, if there is at least one hour, but fewer than 720 hours of quality-assured fuel flowmeter data available for the lookback periods described in sections 2.4.2.2 and 2.4.2.3 of this appendix, use all of the available fuel flowmeter data to determine the appropriate substitute data values.

Appendix D to Part 75 [Amended]

58. Section 3 of Appendix D to Part 75 is amended by:

a. In the definition of the variable ''$\%S_{oil}$'' in Equation D–2 in section 3.1.1 by removing the word ''measured'', and by revising the word ''sample'' to read ''oil'';

b. In the numerator of Equation D–4 in section 3.3.1 by revising the number ''2'' with the number ''2.0'';

c. In the definition of the variable ''GCV_{gas}'' in Equation D–6 in section 3.4.1 by revising the word ''Btu/hr'' to read ''Btu/100 scf'';

d. In the definition of the variable ''GCV_{oil}'' in Equation D–8 in section 3.4.2 by adding the word ''or'' after the word ''Btu/ton,'';

e. In paragraph (b) in section 3.4.3 by revising the words ''Equation D–10 or D–11'' to read ''Equation F–21a or F–21b in appendix F to this part'' in the third sentence and by removing equations and variable definitions for Equations D–10 and D–11;

f. In paragraph (c) of section 3.4.3 by revising the words ''Equation D–10 or D–11'' to read ''Equation F–21a or F–21b'';

g. Revising the section heading of section 3.5;

h. In section heading 3.5.4 by adding the words ''Rate and Heat Input'' after the word ''Input''; and

i. In section 3.5.4 by adding the subsection number ''3.5.4.1'' before the existing text of the section and adding new subsection 3.5.4.2 following the variable definitions for Equation D–15.

The revisions and additions read as follows:

3. Calculations

* * * * *

3.5 Conversion of Hourly Rates to Hourly, Quarterly, and Year-to-Date Totals

* * * * *

3.5.4 Hourly Total Heat Input Rate and Heat Input from the Combustion of all Fuels

* * * * *

3.5.4.2 For reporting purposes, determine the heat input rate to each unit, in mmBtu/hr, for each hour from the combustion of all fuels using Equation D–15a:

$$HI_{rate\text{-}hr} = \frac{\sum_{all\text{-}fuels} HI_{rate\text{-}i} t_i}{t_u} \quad \text{(Eq. D–15a)}$$

Where:

$HI_{rate\text{-}hr}$ = Total heat input rate from all fuels combusted during the hour, mmBtu/hr.

$HI_{rate\text{-}i}$ = Heat input rate for each type of gas or oil combusted during the hour, mmBtu/hr.

t_i = Time each gas or oil fuel was combusted for the hour (fuel usage time), fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_u = Unit operating time

* * * * *

59. Section 1 of Appendix E to Part 75 is amended by revising the second sentence of section 1.1 and adding two sentences after that second sentence to read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

1. Applicability

1.1 Unit Operation Requirements

* * * If a unit's operations exceed the levels required to be a peaking unit, the owner or operator shall install and certify a NO_X-diluent continuous emission monitoring system no later than December 31 of the following calendar year. If the required CEMS has not been installed and certified by that date, the owner or operator shall report the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter) for each unit operating hour, starting with the first unit operating hour after the deadline and continuing until the CEMS has been provisionally certified. For each unit operating hour in which the MER is reported, the MER shall be specific to the type of fuel being combusted in the unit. * * *

* * * * *

60. Section 2 of Appendix E to Part 75 is amended by:

a. Revising sections 2.1.4, 2.2 and 2.5.2;

b. In the second sentence of section 2.1.5 by revising the words ''nearest 0.01 lb/mm/Btu'' to read ''nearest 0.001 lb/mmBtu'';

c. In section 2.3 by revising the words ''10 unit'' to read ''30 unit'' and the words ''section 2.1 of appendix B of this part'' with ''§ 72.2 of this chapter,'' and by revising the reference to ''§ 75.60(a)'' to read ''§ 75.60'';

d. In sections 2.3.1 and 2.3.2 by revising the first sentence of each section, adding a new sentence after each first sentence, and revising each occurrence of the words

''manufacturer's recommended'' to read ''acceptable'';

e. Revising the third sentence of 2.4.2;

f. Adding a new second sentence in section 2.5; and

g. Adding sections 2.5.2.1, 2.5.2.1.1, 2.5.2.1.2, 2.5.2.2, and 2.5.2.3.

The revisions and additions read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

* * * * *

2. Procedure

2.1 Initial Performance Testing

* * * * *

2.1.4 Emergency Fuel

The designated representative of a unit that has a federally-enforceable permit restricting the combustion of a particular fuel to emergencies where the primary fuel is not available is exempted from the requirements of this appendix for testing the NO_X emission rate during combustion of the emergency fuel. The designated representative shall include in the monitoring plan for the unit documentation that the permit restricts use of the fuel to emergencies only. When emergency fuel is combusted, report the maximum potential NO_X emission rate for the unit, in accordance with section 2.5.2.3 of this appendix. The designated representative shall also provide notice under § 75.61(a)(6) for each period when the emergency fuel is combusted.

* * * * *

2.2 Periodic NO_X Emission Rate Testing

Retest the NO_X emission rate of the gas-fired peaking unit or the oil-fired peaking unit while combusting each type of fuel (or fuel mixture) for which a NO_X emission rate versus heat input rate correlation curve was derived, at least once every 20 calendar quarters. If a required retest is not completed by the end of the 20th calendar quarter following the quarter of the last test, use the missing data substitution procedures in section 2.5 of this appendix, beginning with the first unit operating hour after the end of the 20th calendar quarter. Continue using the missing data procedures until the required retest has been passed. Note that missing data substitution is fuel-specific (i.e., the use of substitute data is required only when combusting a fuel (or fuel mixture) for which the retesting deadline has not been met). Each time that a new fuel-specific correlation curve is derived from retesting, the new curve shall be used to report NO_X emission rate, beginning with the first operating hour in which the fuel is combusted, following the completion of the retest.

2.3 Other Quality Assurance/Quality Control-Related NO_X Emission Rate Testing

* * * * *

2.3.1 For a stationary gas turbine, select at least four operating parameters indicative of the turbine's NO_X formation characteristics, and define in the QA plan for the unit the acceptable ranges for these parameters at each tested load-heat input point. The acceptable parametric ranges should be based upon the turbine manufacturer's recommendations. * * *

2.3.2 For a diesel or dual-fuel reciprocating engine, select at least four operating parameters indicative of the engine's NO_X formation characteristics, and define in the QA plan for the unit the acceptable ranges for these parameters at each tested load-heat input point. The acceptable parametric ranges should be based upon the engine manufacturer's recommendations. * * *

* * * * *

2.4 Procedures for Determining Hourly NO_X Emission Rate

* * * * *

2.4.2 * * * Linearly interpolate to 0.1 mmBtu/hr heat input rate and 0.001 lb/mmBtu NO_X. * * *

* * * * *

2.5 Missing Data Procedures

* * * For the purpose of providing substitute data, calculate the maximum potential NO_X emission rate (as defined in § 72.2 of this chapter) for each type of fuel combusted in the unit.

* * * * *

2.5.2 Substitute missing NO_X emission rate data using the highest NO_X emission rate tabulated during the most recent set of baseline correlation tests for the same fuel or, if applicable, combination of fuels, except as provided in paragraphs 2.5.2.1, 2.5.2.2, and 2.5.2.3 of this section.

2.5.2.1 If the measured heat input rate during any unit operating hour is higher than the highest heat input rate from the baseline correlation tests, the NO_X emission rate for the hour is considered to be missing. Provide substitute data for each such hour, as follows.

2.5.2.1.1 Substitute the higher of: the NO_X emission rate obtained by linear extrapolation of the correlation curve, or the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter), specific to the type of fuel being combusted. (For fuel mixtures, substitute the highest NO_X MER value for any fuel in the mixture.) For units with NO_X emission controls, the option to report the extrapolated NO_X emission rate may only be used if the controls are documented (e.g., by parametric data) to be operating properly during the missing data period (see section 2.5.2.2 of this appendix); or 2.5.2.1.2 Substitute 1.25 times the highest NO_X emission rate from the baseline correlation tests for the fuel (or fuel mixture) being combusted in the unit, not to exceed the MER for that fuel (or mixture). For units with NO_X emission controls, the option to report 1.25 times the highest emission rate from the correlation curve may only be used if the controls are documented (e.g., by parametric data) to be operating properly during the missing data period (see section 2.5.2.2 of this appendix).

2.5.2.2 For a unit with add-on NO_X emission controls (e.g., steam or water injection, selective catalytic reduction), if, for any unit operating hour, the emission controls are either not in operation or if appropriate parametric data are unavailable to ensure proper operation of the controls, the NO_X emission rate for the hour is considered to be missing. Substitute the fuel-specific MER (as defined in § 72.2 of this chapter) for each such hour.

2.5.2.3 When emergency fuel (as defined in § 72.2) is combusted in the unit, report the fuel-specific NO_X MER for each hour that the fuel is combusted.

* * * * *

61. Section 2 of Appendix F to Part 75 is amended by revising Equation F–3 in section 2.3 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

2. Procedures for SO_2 Emissions

* * * * *

2.3 * * *

$$E_q = \frac{\sum_{h=1}^{n} E_h t_h}{2000} \qquad \text{(Eq. F-3)}$$

where: * * *

* * * * *

Appendix F Section 3 [Amended]

62. Section 3 of Appendix F to Part 75 is amended by removing the third sentence from section 3.3.5.

63. Section 5 of Appendix F to Part 75 is amended by:

a. In the definition of the variable ''Q_g'' of Equation F–20 in section 5.5.2 by revising the words ''hundred cubic feet'' to read ''hundred standard cubic feet per hour'';

b. In the first sentence of sections 5.6.1, 5.6.2, and 5.7 by revising the word ''should'' to read ''shall.''

c. In the definitions for the variables ''t_i,'' and ''t_{cs},'' and ''n'' of Equations F–21a and F–21b in sections 5.6.1 and 5.6.2 by revising the words ''Operating time at a particular unit'' in the definition of ''variable t_i'' to read ''Unit operating time'', by revising the words ''Operating time at common stack'' in the definition of ''variable t_{cs}'' with ''Common stack or common pipe operating time'', and by adding the words ''or pipe'' to the end of the definition of variable ''n''.

d. Revising the definitions of variables ''HI_s'', ''t_{unit}'', and ''t_s'', and adding a new definition for ''s'' in the definition of variables of Equation F–21c in section 5.7; and

e. Adding section 5.6.3.

The revisions and additions read as follows:

5. Procedures for Heat Input

* * * * *

5.6 Heat Input Rate Apportionment for Units Sharing a Common Stack or Pipe

* * * * *

5.6.3 As an alternative to using Equation F–21a or F–21b, the owner or operator may apportion the heat input rate at a common pipe to the individual units served by the common pipe based on the fuel flow rate to the individual units, as measured by uncertified fuel flowmeters. This option may only be used if a fuel flowmeter system that meets the requirements of appendix D to this part is installed on the common pipe. If this option is used, determine the unit heat input rates using the following equation:

$$HI_i = HI_{CP}\left(\frac{t_{CP}}{t_i}\right)\left[\frac{FF_i t_i}{\sum_{i=1}^{n} FF_i t_i}\right] \qquad \text{(Eq. F – 21d)}$$

Where:

HI_i = Heat input rate for a unit, mmBtu/hr.

HI_{CP} = Heat input rate at the common pipe, mmBtu/hr.

FF_i = Fuel flow rate to a unit, gal/min, 100 scfh, or other appropriate units

t_i = Unit operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_{CP} = Common pipe operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

n = Total number of units using the common pipe.

i = Designation of a particular unit.

5.7 Heat Input Rate Summation for Units with Multiple Stacks or Pipes

* * * * *

HI_s = Heat input rate for the individual stack, duct, or pipe, mmBtu/hr.

t_{Unit} = Unit operating time, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_s = Operating time for the individual stack or pipe, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

s = Designation for a particular stack, duct, or pipe.

Appendix F to Part 75 [Amended]

64. Section 7 of Appendix F to Part 75 is amended by revising the definitions of variables ''E_h'' and ''HI'' of Equation F–23 in section 7 to read as follows:

7. Procedures for SO_2 Mass Emissions at Units with SO_2 Continuous Emission Monitoring Systems During the Combustion of Pipeline Natural Gas or Natural Gas

* * * * *

E_h = Hourly SO_2 mass emission rate, lb/hr.

HI = Hourly heat input rate, as determined using the procedures of section 5.2 of this appendix, mmBtu/hr.

Appendix F to Part 75 [Amended]

65. Section 8 of Appendix F to Part 75 is amended by:

a. In the first sentence of section 8.1.1 by adding the word ''rate'' after each occurrence of the words ''heat input'';

b. Revising the definition of the variable ''t_{cs}'' of Equation F–25 in section 8.1.2; and

c. Adding definitions of the variables ''p'' and ''u'' to Equation F–25 of section 8.1.2.

The revisions and additions read as follows:

8. Procedures for NO_X Mass Emissions

* * * * *

8.1 * * *

8.1.2 * * *

t_{CS} = Common stack operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). (For each hour, t_{cs} is the total time during which one or more of the units which exhaust through the common stack operate.)

* * * * *

p = Number of units that exhaust through the common stack.

u = Designation of a particular unit.

* * * * *

66. Section 2 of Appendix G to Part 75 is amended by:

a. Amending section 2.1 to designate the first two sentences following the variables in Equation G–1 as section 2.1.1, the third sentence as section 2.1.2, and the remaining text as section 2.1.3;

b. Revising the first sentence of section 2.3; and

c. Revising the definition of variable ''F_c'' of Equation G–4 in section 2.3.

The revisions read as follows:

Appendix G to Part 75—Determination of CO_2 Emissions

* * * * *

2. Procedures for Estimating CO_2 Emissions from Combustion

* * * * *

2.3 In lieu of using the procedures, methods, and equations in section 2.1 of this appendix, the owner or operator of an affected gas-fired (or oil-fired) unit (as defined under § 72.2 of this chapter) may use the following equation and records of hourly heat input to estimate hourly CO_2 mass emissions (in tons). * * *

(Eq. G–4) * * *

F_C = Carbon based F-factor, 1040 scf/mmBtu for natural gas; 1,420 scf/mmBtu for crude, residual, or distillate oil; and calculated according to the procedures in section 3.3.5 of appendix F to this part for other gaseous fuels.

* * * * *

Appendix G to Part 75 [Amended]

67. Section 5 of Appendix G to Part 75 is amended by:

a. Removing and reserving sections 5.1 and 5.1.1;

b. Revising the section heading and introductory text of section 5.2; and

c. Revising Table G–1 in section 5.2.2.

The revisions read as follows:

5. Missing Data Substitution Procedures for Fuel Analytical Data

* * * * *

5.2 Missing Carbon Content Data

Use the procedures of this section to substitute for missing carbon content data.

* * * * *

TABLE G–1.—MISSING DATA SUBSTITUTION PROCEDURES FOR MISSING CARBON CONTENT DATA

Parameter	Missing data value
Oil and coal carbon content	Most recent, previous carbon content value available for that type of coal, grade of oil, or default value, in this table.
Gas carbon content	Most recent, previous carbon content value available for that type of gaseous fuel, or default value, in this table.
Default coal carbon content	Anthracite: 90.0 percent. Bituminous: 85.0 percent. Sub-bituminous/Lignite: 75.0 percent.
Default oil carbon content	90.0 percent.
Default gas carbon content	Natural gas: 75.0 percent. Other gaseous fuels: 90.0 percent.

* * * * *

PART 78—APPEAL PROCEDURES FOR ACID RAIN PROGRAM

68. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

69. Section 78.1 is amended by removing from paragraph (a)(1) the words ''parts 72, 73, 74, 75, 76, and 77 of this chapter'' and adding in their place ''parts 72, 73, 74, 75, 76, or 77 of this chapter or part 97 of this chapter''; and adding a new paragraph (b)(6) to read as follows:

§ 78.1 Purpose and scope.

(b) * * *

(6) Under part 97 of this chapter,

(i) The adjustment of the information in a compliance certification or other submission and the deduction or transfer of NO_X allowances based on the information, as adjusted, under § 97.31;

(ii) The decision on the allocation of NO_X allowances to a NO_X Budget unit under § 97.41(b), (c), (d), or (e);

(iii) The decision on the allocation of NO_X allowances to a NO_X Budget unit from the compliance supplement pool under § 97.43;

(iv) The decision on the deduction of NO_X allowances under § 97.54;

(v) The decision on the transfer of NO_X allowances under § 97.61;

(vi) The decision on a petition for approval of an alternative monitoring system;

(vii) The approval or disapproval of a monitoring system certification or recertification under § 97.71;

(viii) The finalization of control period emissions data, including retroactive adjustment based on audit;

(ix) The approval or disapproval of a petition under § 97.75;

(x) The determination of the sufficiency of the monitoring plan for a NO_X Budget opt-in unit;

(xi) The decision on a request for withdrawal of a NO_X Budget opt-in unit from the NO_X Budget Trading Program under § 97.86;

(xii) The decision on the deduction of NO_X allowances under § 97.87; and

(xiii) The decision on the allocation of NO_X allowances to a NO_X Budget opt-in unit under § 97.88.

* * * * *

§ 78.2 [Amended].

70. Section 78.2 is amended by removing the words ''shall apply to this part'' and adding to their place ''shall apply to appeals of any final decision of the Administrator under parts 72, 73, 74, 75, 76, 77, or 78 of this chapter''.

71. Section 78.3 is amended by:

a. Amending paragraph (b)(3)(i) by adding, after the word ''petitioner)'', the words ''or the NO_X authorized account representative under paragraph (a)(3) of this section (unless the NO_X authorized account representative is the petitioner)'';

b. In paragraph (c)(7) by adding, after the words ''title IV of the Act'', the words ''or part 97 of this chapter, as appropriate'';

c. In paragraph (d)(2) by adding, after the words ''Acid Rain Program'' the words ''or on an account certificate of representation submitted by a NO_X authorized account representative or an application for a general account submitted by a NO_X authorized account representative under the NO_X Budget Trading Program'';

d. Redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4) respectively; and

e. Adding new paragraphs (a)(3) and (d)(2).

The additions and revisions read as follows:

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under part 97 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The NO_X authorized account representative for the unit or any NO_X Allowance Tracking System account covered by the decision; or

(ii) Any interested person.

* * * * *

(d) * * *

(2) Any provision or requirement of part 97 of this chapter, including the standard requirements under § 97.6 of this chapter and any emission monitoring or reporting requirements under part 97 of this chapter.

* * * * *

72. Section 78.4 is amended by adding two new sentences after the third sentence in paragraph (a) to read as follows:

§ 78.4 Filings.

(a) * * * Any filings on behalf of owners and operators of a NO_X Budget unit or source shall be signed by the NO_X authorized account representative. Any filings on behalf of persons with an interest in NO_X allowances in a general account shall be signed by the NO_X authorized account representative.

* * *

* * * * *

§ 78.12 [Amended]

73. Section 78.12 is amended by adding, after the words ''was properly issued or should be issued'' in paragraph (a)(2), the words ''or that a

NO_X Budget permit or other federally enforceable permit was properly issued or should be issued''.

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM

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

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

75. Section 97.2 is amended by:

a. Revising the definition of ''continuous emission monitoring system or CEMS'';

b. In the definition of ''Most stringent State or Federal NO_X emissions limitation'' by removing the words '', with regard to a NO_X Budget opt-in unit,'';

c. In the third sentence of the definition of ''NO_X allowance'' by adding the reference ''§ 97.40,'' after the word ''except'';

d. In the definition of ''NO_X Budget unit'' by removing the words ''Trading Program'';

e. In the definition of ''owner'' by adding the word ''the'' before the final occurrence of the word ''NO_X'' in paragraph (4) of the definition; and

f. In the definition of ''Percent monitor data availability'' by revising the words ''3,672 hours per'' to read ''the total number of unit operating hours in the'', and by revising the symbol ''%'' to read ''percent''.

The revisions and additions read as follows:

§ 97.2 Definitions.

* * * * *

Continuous emission monitoring system or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by means of readings taken at least once every 15 minutes (using an automated data acquisition and handling system (DAHS), a permanent record of nitrogen oxides (NO_X) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with part 75 of this chapter. The following are the principal types of continuous emission monitoring systems required under subpart H of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated DAHS. A NO_X concentration monitoring system provides a permanent, continuous record of NO_X emissions in units of parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. A NO_X concentration monitoring system provides a permanent, continuous record of: NO_X concentration in units of parts per million (ppm), diluent gas concentration in units of percent O_2 or CO_2 (% O_2 or CO_2), and NO_X emission rate in units of pounds per million British thermal units (lb/mmBtu); and

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H_2O (% H_2O).

* * * * *

§ 97.4 [Amended]

76. Section 97.4(b) is amended by:

a. Amending the first sentence of paragraph (b)(1) by adding, after the words ''federally enforceable permit that'', the words ''restricts the unit to combusting only natural gas or fuel oil (as defined in § 75.2 of this chapter) during a control period and'';

b. In paragraph (b)(4)(i) by adding, after the words ''with the restriction on'', the words ''fuel use and''; and

c. In paragraph (b)(4)(vi)(B) by adding, after the words ''the restriction on'', the words ''fuel use or''.

77. Section 97.5 is amended by:

a. In the third sentence of paragraph (b)(2) by adding, after the word ''submit'', the words ''such a statement or'';

b. In paragraph (c)(6)(ii) by removing the period and replacing it with ''; or''; and

c. Adding a new paragraph (c)(6)(iii).

The revisions and additions read as follows:

§ 97.5 Retired unit exemption.

* * * * *

(c) * * *

(6) * * *

(iii) The date on which the unit resumes operation, if the unit is not required to submit a NO_X permit application.

* * * * *

§ 97.40 [Amended]

78. Section 97.40 is amended by removing the word ''program''.

§ 97.43 [Amended]

79. Section 97.43 is amended by removing paragraph (c)(8).

§ 97.51 [Amended]

80. Section 97.51 is amended by amending paragraph (b)(1)(i)(D) by adding, after the words ''with respect to'', the word '' NO_X''.

81. Section 97.54 is amended in paragraph (f) introductory text by revising the colon after the words ''as follows'' with a period and by adding a new sentence to the end of the paragraph to read as follows:

§ 97.54 Compliance.

* * * * *

(f) * * * For each State NO_X Budget Trading Program that is established, and approved and administered by the Administrator pursuant to § 51.121 of this chapter, the terms ''compliance account'' or ''compliance accounts'', ''overdraft account'' or ''overdraft accounts'', ''general account'' or ''general accounts'', ''States'', and ''trading program budgets under § 97.40'' in paragraphs (f)(1) through (f)(3) of this section shall be read to include respectively: a compliance account or compliance accounts established under such State NO_X Budget Trading Program; an overdraft account or overdraft accounts established under such State NO_X Budget Trading Program; a general account or general accounts established under such State NO_X Budget Trading Program; the State or portion of a State covered by such State NO_X Budget Trading Program; and the trading program budget of the State or portion of a State covered by such State NO_X Budget Trading Program.

* * * * *

§ 97.61 [Amended]

82. Section 97.61 is amended in paragraph (b) by revising the words ''same year as'' to read ''third year after the year of''.

83. Section 97.70 is amended by:

a. In paragraph (a)(1) by revising the words ''§§ 75.72 and §§ 75.76'' to read ''§§ 75.71 and 75.72'';

b. Revising paragraph (b)(3);

c. Revising paragraph (b)(4);

d. Removing paragraphs (b)(5) and (b)(6);

e. Redesignating paragraphs (b)(7), (b)(8) and (b)(9) as paragraphs (b)(5), (b)(6), and (b)(7), respectively;

f. Revising newly redesignated paragraphs (b)(5) and (b)(6); and

g. Revising paragraph (c).

The revisions and additions read as follows:

§ 97.70 General requirements.

* * * * *

(b) * * *

(3) For the owner or operator of a NO_X Budget unit under § 97.4(a) that

commences operation on or after January 1, 2002 and that reports on an annual basis under § 97.74(d) by the following dates:

(i) The earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation; or (ii) May 1, 2002, if the compliance date under paragraph (b)(3)(i) of this section is before May 1, 2002.

(4) For the owner or operator of a NO_X Budget unit under § 97.4(a) that commences operation on or after January 1, 2002 and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which the unit commences commercial operation, provided that this compliance date is during a control period; or (ii) May 1 immediately following the compliance date under paragraph (b)(4)(i) of this section, if such compliance date is not during a control period.

(5) For the owner or operator of a NO_X Budget unit that has a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on an annual basis under § 97.74(d), by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(6) For the owner or operator of a NO_X Budget unit that has a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue, provided that this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(6)(i) of this section, if such compliance date is not during a control period.

* * * * *

(c) *Commencement of data reporting.* (1) The owner or operator of NO_X Budget units under paragraph (b)(1) or (b)(2) of this section shall determine, record and report NO_X mass emissions, heat input rate, and any other values required to determine NO_X mass emissions (e.g., NO_X emission rate and heat input rate, or NO_X concentration and stack flow rate) in accordance with § 75.70(g) of this chapter, beginning on the first hour of the applicable compliance deadline in paragraph (b)(1) or (b)(2) of this section.

(2) The owner or operator of a NO_X Budget unit under paragraph (b)(3) or (b)(4) of this section shall determine, record and report NO_X mass emissions, heat input rate, and any other values required to determine NO_X mass emissions (e.g., NO_X emission rate and heat input rate, or NO_X concentration and stack flow rate) and electric and thermal output in accordance with § 75.70(g) of this chapter, beginning on:

(i) The date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is during a control period; or

(ii) The first hour on May 1 of the first control period after the date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is not during a control period.

(3) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator may begin reporting NO_X mass emission data and heat input data before the date and hour under paragraph (c)(2)(i) or (c)(2)(ii) of this section if the unit reports on an annual basis and if the required monitoring systems are certified before the applicable date and hour under paragraph (c)(1) or (c)(2) of this section.

* * * * *

84. Section 97.71 is amended by:

a. Revising paragraph (a) introductory text;

b. In paragraphs (b)(1), (b)(2), and (b)(3)(ii) by adding the word ''emission'' before the words ''monitoring system'' in each occurrence in paragraph (b)(1), in both occurrences in the first sentence of paragraph (b)(2), and in the one occurrence in paragraph (b)(3)(ii); and by revising the word ''a'' to read ''an'' after the word ''installs'' in the second sentence of paragraph (b)(1);

c. In paragraphs (b)(3)(iii) and (b)(3)(iv)(C) by removing each occurrence of the words ''or component thereof''; and

d. Revising the second sentence of paragraph (c), adding two new sentences to the end of paragraph (c), and removing paragraphs (c)(i) through (iii).

The revisions and additions read as follows:

§ 97.71 Initial certification and recertification procedures.

(a) The owner or operator of a NO_X Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter for NO_X-diluent CEMS, flow monitors, NO_X concentration CEMS, or excepted monitoring systems under appendix E of part 75 of this chapter for NO_X, under appendix D for heat input, or under § 75.19 for NO_X and heat input, except that:

* * * * *

(c) * * * The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_X Budget Trading Program as of the date on which the certification application is received by the Administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the Administrator or, if such notice is not provided, at the end of the Administrator's 120 day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the NO_X Budget Trading Program prior to the applicable commencement date specified in § 75.19(a)(1)(ii) of this chapter.

* * * * *

85. Section 97.72 is amended by:

a. In paragraph (a) by adding the word ''emission'' before the words ''monitoring system'' and the words ''subpart H,'' before ''appendix D''; and

b. In paragraph (b) by adding the word ''emission'' before ''monitoring system'' in the first sentence, by removing each occurrence of the words ''or component'' in the paragraph, and by adding a new final sentence.

The revisions and additions read as follows:

§ 97.72 Out of control periods.

* * * * *

(b) * * * The owner or operator shall follow the initial certification or recertification procedures in § 97.71 for each disapproved system.

86. Section 97.74 is amended by revising paragraphs (a)(1), (d)(1), and (d)(2)(ii); to read as follows:

§ 97.74 Recordkeeping and reporting.

(a) * * *

(1) The NO_X authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the

recordkeeping and reporting requirements under § 75.73 of this chapter, and with the requirements of § 97.10(e)(1).

* * * * *

(d) * * *

(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_X budget unit chooses to meet the annual reporting requirements of this subpart H, the NO_X authorized account representative shall submit a quarterly report, documenting the NO_X mass emissions from the unit, for each calendar quarter beginning with:

(i) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. NO_X mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(ii) For a unit that commences operation before January 1, 2002 and that is not subject to paragraph (d)(1)(i) of this section, the calendar quarter covering May 1, 2002 through June 30, 2002. NO_X mass emission data shall be recorded and reported from the first hour on May 1, 2002; or

(iii) For a unit that commences operation on or after January 1, 2002:

(A) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. NO_X mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(B) The calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation, if the unit does not commence operation during a control period. NO_X mass emission data shall be recorded and reported from the first hour on May 1 of that control period; or

(iv) A calendar quarter before the quarter specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii)(B) of this section, if the owner or operator elects to begin reporting early under § 97.70(c)(3).

(2) * * *

(ii) Submit quarterly reports, documenting NO_X mass emissions from the unit, only for the period from May 1 through September 30 of each year and including the data described in § 75.74(c)(6) of this chapter. The NO_X authorized account representative shall submit such quarterly reports, beginning with:

(A) For a unit for which the owner or operator intends to apply or applies for early reduction credits under § 97.43, the calendar quarter covering May 1, 2000 through June 30, 2000. NO_X mass emission data shall be recorded and reported from first hour on May 1, 2000;

(B) For a unit that commences operation before January 1, 2002 and that is not subject to paragraph (d)(2)(ii)(A)of this section, the calendar quarter covering May 1 through June 30, 2002. NO_X mass emission data shall be recorded and reported from the first hour of May 1, 2002;

(C) For a unit that commences operation on or after January 1, 2002 and during a control period, the calendar quarter in which the unit commences operation. NO_X mass emission data shall be reported from the date and hour corresponding to when the unit commences operation; or (D) For a unit that commences operation on or after January 1, 2002 and not during a control period, the calendar quarter which includes May 1 through June 30 of the first control period after the unit commences operation. NO_X mass emission data shall be recorded and reported from the first hour on May 1 of the first control period after the unit commences operation.

* * * * *

§ 97.87 [Amended]

87. Section 97.87 is amended in second sentence of paragraph (b)(1)(iii)(A) by adding the word ''be'' after the words ''shall not''.

88. Subpart J consisting of § 97.90 is added to read as follows:

Subpart J—Appeal Procedures

§ 97.90 Appeal Procedures.

The appeal procedures for the NO_X Budget Trading Program are set forth in part 78 of this chapter.

[FR Doc. 01–13142 Filed 6–12–01; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
June 13, 2001

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Deinandra conjugens (Otay tarplant); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH00

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Deinandra conjugens (Otay tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose designation of critical habitat for *Deinandra conjugens* [= *Hemizonia conjugens*] (Otay tarplant) pursuant to the Endangered Species Act of 1973, as amended (Act). *Deinandra conjugens* was federally listed as threatened (under the name *Hemizonia conjugens*) throughout its range in southwestern California and northwestern Baja California, Mexico in 1998. A total of approximately 2,685 hectares (ha) (6,630 acres (ac)) in San Diego County, California, are proposed for designation as critical habitat for *D. conjugens*. We have not proposed critical habitat on lands covered by an existing, legally operative, Habitat Conservation Plan (HCP) under section 10(a)(1)(B) of the Act in which *Deinandra conjugens* is a covered species. In areas where HCPs have not yet been completed, we have proposed designation of critical habitat for lands encompassing essential habitat for *Deinandra conjugens*.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and plant surveys, public comments on the proposed critical habitat rule, finalization of pending habitat conservation plans, and new scientific and commercial information.

DATES: We will accept comments until the close of business on August 13, 2001. Public hearing requests must be received by July 30, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office at the address given above.

3. You may send comments by electronic mail (e-mail) to: fw1cfwo_deco@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

Deinandra conjugens (Otay tarplant) was known as *Hemizonia conjugens* when it was listed on October 13, 1998 (63 FR 54938). Since then, studies analyzing plant and flower morphology and genetic information prompted Baldwin (1999) to revise the Madiinae (tarplants), a tribe in the Asteraceae (sunflower family), and reclassify several species into new or different genera. As a result, *Deinandra conjugens* is now the accepted scientific name for *Hemizonia conjugens.* This taxonomic change does not alter the limits or definition of *D. conjugens.* Because this taxonomic change was published and is generally accepted by the scientific community, we are proposing to change the name of *H. conjugens* to *D. conjugens* in 50 CFR 17.12 (h), and will use *D. conjugens* in this proposed rule.

Deinandra conjugens was first described by David D. Keck (1958) as *Hemizonia conjugens* based on a specimen collected by L.R. Abrams in 1903 from river bottom land in the Otay Valley area of San Diego County, California. *Deinandra conjugens* is a glandular, aromatic annual of the Asteraceae. It has a branching stem that generally ranges from 5 to 25 centimeters (2 to 10 inches) in height with deep green or gray-green leaves covered with soft, shaggy hairs. The yellow flower heads are composed of 8 to 10 ray flowers and 13 to 21 disk flowers with hairless or sparingly downy corollas (fused petals). The phyllaries (small bracts associated with the flower heads) are ridged and have short-stalked glands and large, stalkless, flat glands near the margins. *Deinandra conjugens* occurs within the range of *D. fasciculata* [=*Hemizonia fasciculata*] (fasciculated tarplant) and *D. paniculata* [=*H. paniculata*] (San Diego tarplant). *Deinandra conjugens* can be distinguished from other members of the genus by its ridged phyllaries, black anthers (part of flower that produces pollen), and by the number of disk and ray flowers. The disk and ray flowers each produce different types of seeds (heterocarpy) which is correlated to differential germination responses (Tanowitz *et al.* 1987).

Most *Deinandra conjugens* occurrences are closely associated with particular soils, vegetation types, and elevation range within southwestern San Diego County, California, and northwestern Baja California, Mexico. The majority of *D. conjugens* occurrences are associated with clay soils and with grasslands (native, non-native, and mixed), coastal sage scrub, or maritime succulent scrub. Current information indicates that *D. conjugens* has a narrow geographic and elevation range based on information from herbarium records at the San Diego Natural History Museum (SDNHM) and CNDDB (2000) records.

Deinandra conjugens is strongly correlated with clay soils, subsoils, or lenses (Bauder and Truesdale 2000). Clay soils are heavy (dense) soils with small particles. Such soils typically support grasslands, but may support some woody vegetation. Much of the area with clay soils and subsoils within the historical range of *D. conjugens* likely was once vegetated with native grassland and open coastal sage scrub and maritime succulent scrub, which provided suitable habitat for *D. conjugens.* Based on our Geographic Information System (GIS) analysis, most current and historical *D. conjugens* occurrences (92 percent) are found on clay soils or lenses in one of the following soil types: Diablo clay, Olivenhain cobbly loam, Linne clay loam, Salinas clay loam, Huerhuero loam, Diablo-Olivenhain complex, Stockpen gravelly clay, and San Miguel-Exchequer rocky silt loams.

Deinandra conjugens is also strongly associated with particular vegetation types. The species is found in vegetation

communities classified as, but not limited to, grasslands (native, non-native, and mixed), open coastal sage scrub, maritime succulent scrub, and the margins of some disturbed sites and cultivated fields (California Natural Diversity Data Base (CNDDB) 2000; Keck 1959; Keil 1993; Skinner and Pavlik 1994; David Hogan, San Diego Biodiversity Project, *in litt.* 1990; Bruce Baldwin, Jepson Herbarium, pers. comm. 2001; Mark Dodero, RECON, pers. comm. 2001; Scott McMillan, McMillan Biological Consulting, pers. comm. 2001). Plant species common to these vegetation communities include *Nassella* spp. (needlegrass), *Bloomeria crocea* (common goldenstar), *Dichelostemma pulchella* (blue dicks), *Chlorogalum* spp. (soap plant), *Bromus* spp. (brome grass), *Avena* spp. (oats), *Deinandra fasciculata* (fasciculated tarweed), *Lasthenia californica* (common goldfields), *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (flat-top buckwheat), *Lotus scoparius* (deer weed), *Salvia* spp. (sage), *Mimulus aurantiacus* (bush monkeyflower), *Malacothamnus fasciculatum* (bushmallow), *Malosma laurina* (laurel sumac), *Rhus ovata* (sugar bush), *R. integrifolia* (lemonade berry), *Lycium* spp. (boxthorn), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), *Opuntia* spp. (prickly pear and cholla cactuses), *Ferocactus viridescens* (coastal barrel cactus), *Ambrosia chenopodiifolia* (San Diego bur sage), and *Dudleya* spp. (live-forevers).

Based on information from herbarium records at the San Diego Natural History Museum (SDNHM) and CNDDB (2000) records, *Deinandra conjugens* has a narrow geographic distribution. Additional information since the listing indicates that the historical range for *D. conjugens* in San Diego County, California, is from the Mexican border north to Spring Valley and Paradise Valley, a distance of about 24 kilometers (km) (15 miles (mi)), and from Interstate 805 east to Otay Lakes Reservoir, a distance of about 13 km (8 mi). Further, based on these museum and database records, the elevational range for *D. conjugens* appears to be between 25 and 300 meters (m) (80 and 1000 feet (ft)). Because other *Deinandra* species have been documented outside of these elevations and geographic distributions, during the same time periods, but absent *D. conjugens*, we believe these to be the elevation and range limits for this species in the United States.

Typically, *Deinandra conjugens* and other tarplants cannot produce viable seeds without cross pollinating with other individuals (i.e. are extremely self-incompatible) (Keck 1959; Tanowitz 1982; B. Baldwin, *in litt.* 2001). Gene flow is important for the long-term survival of self-incompatible species (Ellstrand 1992) such as through pollination. Gene flow in *D. conjugens* is essentially achieved through pollen movement among populations. The movement of pollen likely occurs over short distances because most of the insects that visit *Deinandra* are relatively localized and generally travel less than 0.5 km (0.3 mi) at one time. Because small inter-population occurrences of *D. conjugens* may facilitate greater gene flow, this conservation may be critical to maintaining genetic diversity in *D. conjugens*. Pollinators of *D. conjugens* include, but are not limited to, bee flies (Bombylliidae); hover flies (Syrphidae); digger, carpenter, and cuckoo bees (Anthophoridae); and metallic bees (Halictidae) (Krombein *et al.* 1979; M. Dodero, pers. comm. 2001). The following bee species have been documented visiting *Deinandra* species: *Nomia melanderi, Colletes angelicus, Nomadopsis helianthi, Ventralis claypolei ausralior, Anthidiellum notatum robertsoni, Heriades occidentalis, Anthocopa hemizoniae, Ashmeadiella californica californica, Svastra sabinensis nubila, Melissodes tessellata, M. moorei, M. personatella, M. robustior, M. semilupina, M. lupina, M. stearnsi, Anthophora urbana urbana,* and *A. curta curta* (Krombein *et al.* 1979).

Deinandra conjugens fruits are each one-seeded and are likely to be dispersed by small to large-sized mammals and birds based on the sticky nature of the remaining flower parts that are attached to the fruits and the discontinuous distribution of other tarplants (B. Baldwin, *in litt.* 2001; M. Dodero, pers. comm. 2001; Elizabeth Friar, Claremont Graduate University, pers. comm. 2001; Gjon Hazard, U. S. Fish and Wildlife Service (Service), pers. comm. 2001). Likely seed/fruit dispersal organisms include, but are not limited to, mule deer (*Odocoileus hemionus*), gray foxes (*Urocyon cinereoargenteus*), coyotes (*Canis latrans*), black-tailed jackrabbits (*Lepus californicus bennettii*), bobcats (*Felis rufus*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), racoons (*Procyon lotor*), and small land birds.

The *Deinandra conjugens* seed bank (a reserve of dormant seeds, generally found in the soil) is important for its year-to-year and long-term survival (Given 1994, Rice 1989). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year. The number and location of standing plants in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. Large annual fluctuations in the number of standing plants in a given site have been documented. Population size has ranged from 1 to over 5,400 standing plants at a site on northwest Otay Mesa (CNDDB 2000; City of San Diego, *in litt.* 1999), from approximately 100 to 50,000 in a site in Rice Canyon (CNDDB 2000), and from approximately 280,000 to 1.9 million at San Miguel Ranch South (CNDDB 2000; Merkel & Associates, *in litt.* 1999). In any given year, the observable plants in a population are only the portion of the individuals from the seed bank that germinated that year. These annual fluctuations make it look as though a population of annual plants ''moves'' from year to year, when in actuality, a different portion of a population germinates and flowers each year. The occurrence and spatial distribution of a standing population of plants is generally the result of the occurrence and spatial distribution of the micro-environmental conditions conducive to the germination of the seeds and growth of the plants within the seed bank of a population.

Determining the size/magnitude of a given *Deinandra conjugens* population is difficult due to the major fluctuations that have been documented in known sites (CNDDB 2000; Merkel & Associates, *in litt.* 1999). Conditions during some years are better for growth and reproduction of *D. conjugens* in some populations (and even some portions of a population) than other years. Because the number of standing plants in a given population can vary by orders of magnitude from one year to the next, the number of standing plants observed in a population in any one year does not indicate the magnitude of that population.

The largest number of *Deinandra conjugens* plants were recorded in 1998 when it was estimated that there were over 2 million individuals for the species as a whole (CNDDB 2000; Merkel & Associates, *in litt.* 1999). However, the number of standing plants in most years is probably considerably fewer. To demonstrate this variability, the species was thought to be extinct as a result of extensive development within its range until its rediscovery in Estado de Baja California, Mexico in 1977 (Tanowitz 1978). Conversely, the largest population (Rancho San Miguel) supported about 1.9 million plants

during 1998 when southern California experienced El Niño weather conditions, which resulted in a particularly wet and prolonged growing season (Merkel & Associates, *in litt.* 1999).

In 1998, the five largest populations of *Deinandra conjugens* (Rancho San Miguel, Rice Canyon, Dennery Canyon, Poggi Canyon, and Proctor Valley) were known to support about 98 percent of all reported standing plants (CNDDB 2000; San Diego Gas and Electric 1995; Roberts 1997; Merkel & Associates, *in litt.* 1999; Sandra Morey, California Department of Fish and Game (CDFG), *in litt.* 1994; Ogden Environmental 1992; Brenda Stone, California Department of Transportation, *in litt.* 1994) with each reportedly containing more than 10,000 standing plants. Of the remaining populations, 8 are reported to support from 1,000 to 8,000 plants each; 9 are reported to support fewer than 1,000 plants each; and 3 are considered to be extirpated (CNDDB 2000). These populations occur on Federal, local, and private lands (CNDDB 2000).

The smaller populations of *Deinandra conjugens* are essential to the survival and conservation of the species because they are strategically located between larger populations and facilitate gene flow among them. Gene flow has been demonstrated to reduce local and global extinction rates in a number of species (Hanski 1998; B. Baldwin, *in litt.* 2001). Processes such as mutation, genetic migration, and random genetic drift are known to adversely affect small populations (Barrett and Kohn 1991). Adverse effects from these processes on *D. conjugens* are magnified by its self-incompatibility (Keck 1959; Tanowitz 1982; B. Baldwin, *in litt.* 2001). Maintaining gene flow among the populations is essential to counter the adverse effects from the processes mentioned above, and to ensure the long-term survival and conservation of this species.

Deinandra conjugens has a limited distribution consisting of at least 25 historical populations near Otay Mesa in southern San Diego County and one population near the United States border in Baja California, Mexico (CDFG 1994; Roberts 1997; CNDDB 2000; Reiser 1996; herbarium records at the SDNHM; S. Morey, *in litt.* 1994). Three of the 25 historic localities of *D. conjugens* in the United States are considered to be extirpated (CNDDB 2000; D. Hogan, *in litt.* 1990; S. Morey, *in litt.* 1994). At the time the species was listed in 1998, we estimated that 70 percent of the suitable habitat for this species within its known range had been lost to development or agriculture (63 FR 54938). Since the listing, additional habitat has been lost to development (e.g., urban, commercial, industrial, residential) and agriculture (e.g., grazing, farming).

Deinandra conjugens appears to tolerate mild levels of disturbance such as light grazing (D. Hogan, *in litt.* 1990; Barry Tanowitz, University of California, *in litt.* 1977). Such mild disturbances may create sites conducive to germination (B. Tanowitz, *in litt.* 1977). However, the species is otherwise threatened by urbanization and related activities, intensive agriculture, and the invasion of non-native species which may result in significant disturbance to populations (63 FR 54938). Because of these threats, we anticipate that intensive long-term monitoring and management will be needed to conserve this species.

At the time the species was listed in 1998, we estimated that about 11,930 ha (30,310 ac) of land with clay soils or clay subsoils were within the general range of *Deinandra conjugens* in San Diego County, California (63 FR 54938). Also at that time, about 4,200 ha (10,600 ac) (about 37 percent) of this area had been urbanized and about 4,155 ha (10,555 ac) (about 37 percent) had been heavily cultivated and grazed (63 FR 54938). Additional areas have been lost to urbanization since this time. New information from herbarium records at the SDNHM indicates that the historic range of *D. conjugens* extended further to the north and northwest. Most of the habitat in this additional area has already been lost to development. Much of the cultivated and grazed lands in this range could be restored to support *D. conjugens*, which can grow in the margins of cultivated fields (S. McMillan, pers. comm. 2001; M. Dodero, pers. comm. 2001). However, most of these lands will likely be unavailable for the species because of proposed land use (FWS GIS database 2001 which includes coverages from San Diego Association of Governments).

Previous Federal Action

On December 15, 1980, we published a Notice of Review of plants which included *Deinandra conjugens* as a category 1 candidate taxon (45 FR 82480). Category 1 taxa were those taxa for which substantial information on biological vulnerability and threats are available to support preparation of listing proposals. On November 28, 1983, we published a supplement to the 1980 Notice of Review that treated *D. conjugens* as category 2 candidate taxa (48 FR 53640). Category 2 candidates were taxa for which data in our possession indicated listing was possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules.

On December 14, 1990, we received a petition dated December 5, 1990, from Mr. David Hogan of the San Diego Biodiversity Project, to list *Deinandra conjugens* as endangered. The petition also requested designation of critical habitat. Because *D. conjugens* was included in the Smithsonian Institution's Report of 1975, designated as House Document No. 94–51, that had been accepted as a petition, we regarded Mr. Hogan's petition to list this taxon as a second petition. We ultimately responded to the petitions by publishing a proposed rule to list *D. conjugens* as endangered on August 9, 1995 (60 FR 40549). On October 13, 1998, we published a final rule listing *D. conjugens* as threatened (63 FR 54938). At that time, we indicated that designation of critical habitat was not prudent.

On July 15, 1999, the California Native Plant Society (CNPS) and Southwest Center for Biological Diversity (SWCBD) filed a lawsuit in Federal District Court for the Southern District of California, in part, challenging our decision not to designate critical habitat for *Deinandra conjugens (California Native Plant Society; et al.* v. *Babbitt, et al.,* 99CV1454 L (S.D.Cal.). On December 21, 2000, we entered into a stipulated settlement agreement with the plaintiffs under which we agreed to reevaluate the prudency determination for *D. conjugens.* Under the settlement agreement, if we determine that critical habitat is prudent, we are to publish in the **Federal Register** a proposed rule to designate critical habitat by June 5, 2001, with a final determination to be completed by May 30, 2002. This proposed critical habitat determination is consistent with this stipulated settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the

species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification with regard to actions carried out, funded, permitted, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that lack a Federal nexus, critical habitat designation would not afford any additional protections under the Act with respect to such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. At the time of the final listing determination (63 FR 54938), we concluded that designation of critical habitat for *Deinandra conjugens* was not prudent because such designation would not benefit the species. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In our final rule, we concluded that the designation of critical habitat for *Deinandra conjugens* was not prudent, explaining that such designation would not benefit the species because it occurs primarily on private lands with little or no Federal involvement (63 FR 54954).

We now conclude that there may be some additional benefits to designating critical habitat. While a critical habitat designation for habitat currently occupied by this species would not likely change the section 7 consultation because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation

would be triggered only if critical habitat is designated (for example, if we designated unoccupied habitat, or if occupied habitat became unoccupied in the future).

There may also be some educational or informational benefits to designating critical habitat. Critical habitat may be used as a tool to help identify areas within the range of *Deinandra conjugens* essential for the conservation of the species. For example, designation of critical habitat on non-Federal lands may provide some educational benefit by formally identifying on a range-wide basis those areas essential to the conservation of the species and, thus, areas that are likely to be the focus of recovery efforts for *D. conjugens.*

In addition, three significant occurrences of *Deinandra conjugens* now occur on Federal lands, two on the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge (SDNWR) and one on Brown Field, which is under the authority of the Immigration and Naturalization Service-Border Patrol (INS). The land that contains the two occurrences on SDNWR was acquired after the species was listed and the occurrence on the INS site was only known as a point locality, but was determined to be much more extensive (with more than 5,000 standing plants) after the species was listed.

Based on our discussion above, we now conclude that there may be some additional benefits to designating critical habitat on lands essential for the conservation of *Deinandra conjugens*. Therefore, it is prudent to propose the designation of critical habitat for *D. conjugens*.

Methods

In determining areas that are essential to conserve *Deinandra conjugens*, we used the best scientific data available. We reviewed available information that pertains to the habitat requirements of this species, including data from research and survey observations published in peer-reviewed articles; regional GIS coverages (e.g., soils, known locations, vegetation, land ownership, and habitat conservation plan (HCP) boundaries); information from herbarium collections such as from SDNHM; data from the CNDDB (2000); data collected from project-specific and other miscellaneous reports submitted to us; additional data from the San Diego County Multiple Species Conservation Program (MSCP), such as information from various Subarea or draft Subarea Plans (e.g., City of San Diego, County of San Diego, City of La Mesa, and City of Chula Vista); information in the San Diego Gas and Electric HCP (1995); and a habitat evaluation model for the Otay Mesa Generating Project.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Deinandra conjugens* are within the historical range and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of the species.

The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Deinandra conjugens* throughout its range, and provide those habitat components essential for the conservation of the species. Habitat components that are essential for *D. conjugens* are found in vegetation communities classified as, but not limited to, grasslands (native, non-native, and mixed), coastal sage scrub, or maritime succulent scrub in southwestern San Diego County, California. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow gene flow and provide connectivity or linkage between or within larger populations, including open spaces and disturbed areas that in some instances may also contain introduced plant species; (3) areas that provide basic requirements for growth such as water, light, minerals (i.e., watersheds); and (4) areas that support populations of pollinators and seed dispersal organisms.

The long-term survival and conservation of *Deinandra conjugens* is dependent upon a number of factors, including the protection and management of existing population sites, the protection of inter-population occurrences, the maintenance of normal ecological functions within these sites, the preservation of the connectivity between sites to maintain the natural order of gene flow between sites through pollinator activity and seed dispersal mechanisms, the protection and maintenance of sites for the survival of pollinators and seed dispersal agents, and the preservation of suitable micro-habitat sites that could be recolonized and allow a population to survive a catastrophic event. The small fragmented range of this species, coupled with its breeding system (i.e., its self-incompatibility and annual nature), makes it especially vulnerable to natural and anthropogenic effects including disturbance from human and agricultural activities; spread of non-native species; and nearby use of herbicides, pesticides, and other contaminants (63 FR 54938; B. Baldwin, pers. comm. 2001; S. McMillan, pers. comm. 2001).

Based on our current knowledge of this species, the primary constituent elements of *Deinandra conjugens* critical habitat consist of, but are not limited to:

(1) soils with a high clay content (generally >25 percent) (or clay intrusions or lenses) that are associated with grasslands (native, non-native, and mixed), open coastal sage scrub, or maritime succulent scrub communities between 25 m (80 ft) and 300 m (1000 ft) elevation; and

(2) plant communities associated with *Deinandra conjugens* which include, but are not limited to grasslands (native, non-native, and mixed), open coastal sage scrub, and maritime succulent scrub between 25 and 300 m (80 and 1,000 ft) elevation in southwestern San Diego County, California. Species common to these communities include *Nassella* spp. (needlegrasses), *Bloomeria crocea* (common goldenstar), *Dichelostemma pulchella* (blue dicks), *Chlorogalum* spp. (soap plants), *Bromus* spp. (brome grasses), *Avena* spp. (oats), *Deinandra fasciculata* (fascicled tarweed), *Lasthenia californica* (common goldfields), *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (flat-top buckwheat), *Lotus scoparius* (deer weed), *Salvia spp.(sages), Mimulus aurantiacus* (bush monkeyflower), *Malacothamnus fasciculatum* (bushmallow), *Malosma laurina* (laurel sumac), *Rhus ovata* (sugar bush), *R. integrifolia* (lemonade berry), *Lycium* spp. (boxthorns), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), *Opuntia* spp. (prickly pear and cholla cactuses), *Ferocactus viridescens* (coastal barrel cactus), *Ambrosia chenopodiifolia* (San Diego bur sage),

and *Dudleya* spp. (live-forevers). These plant communities contain natural openings that provide nesting, foraging, and dispersal sites for *D. conjugens* pollen and seed dispersal agents. These openings may have soil inclusions that contain a significantly higher concentration of sandy soils than the adjacent clay soils.

Criteria Used To Identify Critical Habitat

In our proposed delineation of critical habitat for *Deinandra conjugens*, we selected areas essential to the conservation of the species from within its known historical range. We used data from documented occurrences, various GIS layers, and recent aerial photography. These data include *D. conjugens* locations, soils, vegetation, elevation, topography, and current land uses.

We began by using the GIS layers to identify areas of suitable habitat within the geographic distribution of this species. We selected areas with appropriate soils and vegetation that are limited to the elevational range of the species within its known distribution. We then selected soils and plant communities that overlapped known *Deinandra conjugens* occurrences. Areas occupied by *D. conjugens* can not be determined accurately either by cursory field examination or by the limited data from historic observations. The entire population of an annual plant (which includes all of the seeds in the subterranean seed bank and the observable plants above ground) is not visible at any one time. The entire seed bank does not germinate at once, and the visible population of plants rarely reflects the extent of the seed bank. There may be no visible evidence of a plant population for a year or even a span of several years, until local climatic and other conditions are suitable for seed germination. The extent and distribution of the observable plant population may move, shrink, or grow as conditions change, without a similar change in the distribution of the seed bank. As a result, the mapping of *D. conjugens* occurrences has been variable, depending both on the scale of the mapping and the year in which the surveys were conducted (documented examples include records ranging from one to more than 5,400 plants for one population, from about 100 to 50,000 in another, and from 280,000 to 1.9 million plants in another population). In the closely related *Holocarpha macradenia* (Santa Cruz tarplant), seemingly unoccupied habitat has been determined to contain a viable seed bank where standing plants have not been seen in over 7 years (Bainbridge, *in litt.* 1999). By overlapping known occurences of *D. conjugens* with appropriate soil types, elevations, and other habitat characteristics, we have included what we believe is the likely distribution of the seed bank around known historical occurrences of *D. conjugens*.

We then eliminated areas that did not contain both appropriate soils and appropriate vegetation such as, but not limited to, currently used agriculture fields, housing developments, and open water. Next, we eliminated all areas above 300 m (1000 ft) elevation, the upper limit of the known distribution of *D. conjugens*, based on herbarium records. We also compared the remaining areas of suitable *D. conjugens* habitat with recent project information and aerial photography so we did not include areas that have recently been developed or had negative surveys for *D. conjugens*.

We conducted this analysis to facilitate delineating suitable habitat containing the primary constituent elements. The long-term survival and conservation of *D. conjugens* is dependent upon the protection and management of existing occurrences, including the seed bank, and the maintenance of ecological functions within these areas, including connectivity within and among sites to allow effective pollinator activity and seed dispersal.

The boundaries of proposed critical habitat for *Deinandra conjugens,* shown on the attached maps and defined in the legal description, are based on a 100-meter Universal Transverse Mercator (UTM) grid, boundaries that have been legally described for the City of Chula Vista's draft preserve design for their draft MSCP Subarea Plan and the County of San Diego's major and minor amendment areas for their MSCP Subarea Plan, Sweetwater Authority lands (a water district in San Diego County), Otay Water District lands, Federal lands (e.g., INS, SDNWR), and Trust for Public Lands property. This grid was overlaid on those areas determined to be essential and indicated by the *D. conjugens* habitat analysis where we did not have legal descriptions for boundaries.

As we discuss in detail below (see ''Relationship To Habitat Conservation Plans and Other Planning Efforts''), lands that are covered by an existing, legally operative, HCP with an operative implementing agreement (IA) in which *Deinandra conjugens* is a covered species are not being proposed for designation as critical habitat and have not been included in the mapped areas because the benefits of exclusion outweigh the benefits of inclusion pursuant to section 4(b)(2) of the Act. Areas excluded based on this criterion include lands within the MSCP for the County and City of San Diego, with the exception of those lands within the major and minor amendment areas, where the impacts to and conservation of *D. conjugens* have not been addressed. Apart from the lands with operative HCPs, the majority of the remaining occupied habitat for *D. conjugens* falls within designated or draft preserve areas within the MSCP.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns or housing developments, and lands unlikely to contain the primary constituent elements essential for conservation of *Deinandra conjugens.* Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. Lands containing existing features and structures, such as buildings, roads, railroads, urban development, and other similar developed features that do not contain primary constituent elements, are not considered critical habitat and are not proposed as critical habitat. Federal actions limited to those areas would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

The proposed critical habitat units described below constitute our best assessment of areas that are essential for the species' conservation. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period and field surveys, that the boundaries of the mapping units may be refined.

Critical Habitat Proposal

The approximate area encompassing the proposed designation of critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not primary constituent elements within [1]]

County	Federal [2]	State/Local	Private	Total
San Diego	625 ha (1,545 ac)	590 ha (1,455 ac)	1,470 ha (3,630 ac)	2,685 ha (6,630 ac)
Total	625 ha (1,545 ac)	590 ha (1,455 ac)	1,470 ha (3,630 ac)	2,685 ha (6,630 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, approximate hectares and acres have been rounded to the nearest 5.
[2] Federal lands include the Service and INS lands.

Critical habitat includes habitat throughout the species' current range in the United States (San Diego County, California). Lands proposed are under Federal, State, local, and private ownership. Federal lands include areas owned or managed by the Service and INS. Lands proposed as critical habitat have been divided into three critical habitat units. We are proposing to designate critical habitat on lands that are considered essential to the conservation of *Deinandra conjugens.* Each of the critical habitat units for *D. conjugens* is considered to be occupied by either seeds as part of the seed bank or standing plants. A brief description of each unit, and reasons for proposing to designate it as critical habitat, are presented below.

Unit 1: Sweetwater/Proctor Valley Unit

The Sweetwater/Proctor Valley Unit encompasses approximately 1,565 ha (3,865 ac) at the northeastern limit of this species' distribution. This unit is south and east of State Route 54, south and west of State Route 94, and north of Upper Otay Reservoir. It includes portions of the Otay/Sweetwater Unit of SDNWR; lands belonging to the Sweetwater Authority around the Sweetwater Reservoir; lands belonging to the Otay Water District; lands that are proposed as preserve under the City of Chula Vista's Subarea Plan; portions of two project areas within the City of Chula Vista's Subarea Plan, but outside of the proposed preserve lands; and lands that are within major and minor amendment areas within the County of San Diego's Subarea Plan. Two areas in this unit have not been proposed as critical habitat, including the alignment for State Route 125 south and the San Diego County Park campground realignment and expansion because these areas have been analyzed and determined not to be essential.

This unit contains several large populations of *Deinandra conjugens,* including a portion of the Rancho San Miguel population estimated to contain approximately 855,000 standing *D. conjugens* plants during the 1995 and 1998 growing seasons (CNDDB 2000; Merkel & Associates, *in litt.* 1999). The Rolling Hills population, which had approximately 27,000 standing plants in the 2000 growing season (Stephen Neudecker, Helix Environmental Planning, Inc., *in litt.* 2001), and the Proctor Valley population, which had approximately 10,000 standing plants in the 1990 growing season (CNDDB 2000), are also included. This unit also contains an area on the north side of the Sweetwater Reservoir where reports indicate there are approximately 2,000 standing plants (Roberts 1997), and an area on the north portion of the SDNWR that had approximately 2,000 standing plants in 1993 (CNDDB 2000). Additionally, there are a number of new occurrences in this unit between the populations that were documented since the species was listed in 1998. These newly discovered ''inter-population'' occurrences provide genetic connectivity throughout this unit and among the *Deinandra conjugens* populations. One of these newly discovered occurrences had approximately 1,000 standing plants in 2000 (S. McMillan, *in litt.* 2001) and another had over 27,000 standing plants (S. Neudecker, *in litt.* 2001).

This unit contains multiple large *Deinandra conjugens* populations that are capable of producing large numbers of individuals in good years, which is important for this species to survive through a variety of natural and environmental changes, as well as stochastic (random) events. This unit contains populations in the north and eastern portions of this species' distribution which may be important for its long-term survival and conservation. The populations in this unit can maintain genetic connectivity within and among themselves, and they may maintain genetic connectivity with the Otay Valley/Big Murphy's Unit. Therefore, the populations in this unit are essential to the survival and conservation of the species.

Unit 2: Chula Vista Unit

The Chula Vista Unit encompasses approximately 210 ha (515 ac) at the western portion of this plant's range. Most of the occurrences and populations in this unit are found in the remaining habitat patches along canyon edges that were not optimum for urbanization. This unit contains lands that are proposed as preserve under the City of Chula Vista's Subarea Plan, lands that are in a minor amendment area under the County of San Diego's Subarea Plan, or lands that are in a minor amendment area under the City of Chula Vista's Subarea Plan.

This unit contains the Rice Canyon population, which had more than 50,000 standing plants in 1994 (CNDDB 2000), and portions of (occurrences within) the Poggi Canyon population that had a reported 10,000 standing plants in 1990 (CNDDB 2000). This unit contains populations in the western portion of this species' distribution which though currently isolated from each other may contain significant amounts of genetic diversity and are, therefore, essential to the survival and conservation of the species. Peripheral populations may have genetic characteristics essential to overall long-term conservation of the species (i.e. they may be genetically different than more central populations) (Lesica and Allendorf, 1995).

Unit 3: Otay Valley/Big Murphy's Unit

The Otay Valley/Big Murphy's Unit encompasses approximately 910 ha (2,249 ac). It is east of Interstate 805, north of the International Boundary between the United States and Mexico on the east side, north of State Route 905 on the west side, west of Otay Mountain, and along the north rim of Otay Valley including Salt Creek and Wolf Canyon. This unit includes lands owned by INS, lands that are proposed as preserve under the City of Chula Vista's Subarea Plan, and lands that are in major and minor amendment areas in the County of San Diego's Subarea Plan. Areas in this unit that are within the alignment for State Route 125 south

have not been proposed as critical habitat because these areas have been analyzed and determined not to be essential.

This unit contains several large populations of *Deinandra conjugens* that are capable of producing large numbers of individuals in good years which are important for this plant to survive through a variety of natural and environmental changes as well as stochastic events. It also contains the Otay River Valley population which was reported to have approximately 4,000 standing plants (Roberts 1997), the Wolf Canyon population which was reported to have approximately 4,000 standing plants (Roberts 1997), the Brown Field population which had a reported 5,600 individuals in 1998 (U.S. Army Corps of Engineers (Corps) 2000), and the upper Salt Creek population which was reported to have over 1,000 standing plants (Roberts 1997).

Unit 3 contains populations in the southern and eastern portions of this species' distribution, which may be important for its long-term survival and conservation. One population in this unit is located at the southwest edge of this species' range in the United States. This population may have connectivity with *Deinandra conjugens* populations in northwestern Baja California, Mexico. Because this population is at the extreme southwest portion of this species' range in the United States, it may contain important genes that are not found in other populations.

Based on the proposed preserve design for the City of Chula Vista's Subarea Plan, and the designated preserve designs for the City and County of San Diego HCPs, these populations may all retain connectivity among themselves because the habitat mosaic does not have large gaps. The occurrences in this unit may also provide and receive pollen or fruits from *Deinandra conjugens* populations in the Sweetwater/Proctor Valley Unit.

This connectivity will facilitate gene flow within this unit and among other units which, in turn, may allow evolutionary processes that affect *Deinandra conjugnes* to continue relatively unimpeded. Maintaining the *D. conjugnes* populations and their genetic connectivity (both within and among units) is essential to the survival and conservation of this species. A portion of the *D. conjugnes* population north of Otay Valley and west of Otay Lakes is located within proposed critical habitat, and a portion is located outside of proposed critical habitat in the proposed development area for the City of Chula Vista's Subarea Plan. This portion of the population may provide important genetic connectivity between the Salt Creek and Otay Valley populations.

Because this unit contains a number of large *Deinandra conjugnes* populations, these populations will maintain genetic connectivity within and among themselves, they will maintain genetic connectivity with the Sweetwater/Proctor Valley Unit and possibly with plants in Mexico, and they may contain essential genetic diversity; therefore, the populations in this unit are essential to the survival and conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation , we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Deinandra conjugens* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration,

Federal Aviation Administration (FAA), or Federal Emergency Management Agency (FEMA)); permits from the Department of Housing and Urban Development (HUD); activities by INS on their land or land under their jurisdiction; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy (DOE), or any other Federal agency; regulation of airport improvement activities by FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of *Deinandra conjugens.* We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying *Deinandra conjugens* habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, herbicide application, etc.);

(2) Activities that appreciably degrade or destroy *Deinandra conjugens* habitat (and its PCEs), including, but not limited to, livestock grazing, clearing, discing, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation); and

(4) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain grassland, scrub, and chaparral communities. These activities could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including row crops and livestock grazing; and vegetation manipulation such as clearing or grubbing in the watershed upslope from *D. conjugens*.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave., Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery, and actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Because we are designating areas that are occupied either by standing plants or the underground seedbank of *Deinandra conjugens*, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species, the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Actions on which Federal agencies consult with us include, but are not limited to:

(1) Regulation of activities affecting waters of the U.S. by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of airport improvement activities by the FAA jurisdiction;

(4) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies;

(5) Development on private lands requiring permits from other Federal agencies such as HUD;

(6) Construction of communication sites licensed by the FCC;

(7) Authorization of Federal grants or loans;

(8) Construction of roads and fences along the International Boundary between the United States and Mexico, and other activities associated with immigration enforcement by the INS;

(9) Activities funded by the EPA, DOE, or any other Federal agency; and

(10) Hazard mitigation and post-disaster repairs funded by the FEMA.

Relationship to Habitat Conservation Plans and Other Planning Efforts

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that, in most instances, the benefits of excluding HCPs for which *Deinandra conjugens* is a covered species from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily

would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their IAs. These HCPs and IAs include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, unless critical habitat has already been designated within the proposed plan area, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (65 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. They include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together, can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in which *Deinandra conjugens* is a covered species on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Section 4(b)(2) Evaluation of Specific HCPs

We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of HCPs for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of *Deinandra conjugens*, while directing development and habitat modification to nonessential areas of lower habitat value.

Only HCPs within or adjacent to the boundaries of the proposed critical habitat units are discussed herein. Those approved and legally operative HCPs that provide coverage for *Deinandra conjugens* have been excluded from this proposed designation.

We have worked with local jurisdictions to complete several HCPs that include areas where the species occurs. These HCPs include the San Diego Gas and Electric HCP and two Subarea Plans under the MSCP. Both the City of San Diego's Subarea Plan and the County of San Diego's Subarea Plan have received coverage for *Deinandra conjugens*. The San Diego MSCP encompasses approximately 236,000 ha (582,000 ac) of land in southwestern San Diego County, and involves multiple jurisdictions. Approximately 69,600 ha (172,000 ac) are targeted to be conserved within the preserve system. The Service and the California Department of Fish and Game approved the overall MSCP and the City of San

Diego's Subarea Plan in July 1997. The County of San Diego's plan was approved in 1998. San Diego Gas and Electric, which has easements throughout the MSCP, completed its plan in 1995.

We find that the benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementing agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these approved HCPs in critical habitat for *Deinandra conjugens* include increased educational benefits and minor additional management protections and measures. The benefits of excluding these HCPs from designated critical habitat for *D. conjugens* include additional conservation measures for this and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. Therefore, we believe the benefits of exclusion outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We determined that the approved HCPs will not jeopardize the continued existence of *D. conjugens*, which means that they will not appreciably reduce the likelihood of the survival and recovery of the species.

The Sweetwater Authority is currently working on an HCP and the City of Chula Vista is expected to complete their HCP subarea planning processes in the near future. We have worked and continue to work closely with the City of Chula Vista on the design of their preserve, specifically in relation to the conservation of *Deinandra conjugens*. The City of Chula Vista's draft HCP proposes to conserve many of the large, essential *D. conjugens* populations, areas for connectivity within and among these populations, habitat to support pollinators and fruit dispersal agents, and includes criteria for conservation of *D. conjugens* within certain areas that have not yet been surveyed. The majority of the draft preserve contains clay soils and the appropriate vegetation types for *D. conjugens*.

In the event that future HCPs, in addition to those under development by City of Chula Vista and Sweetwater Authority, covering *Deinandra conjugens* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of *D. conjugens* by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *D. conjugens*. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants with respect to HCPs currently under development and future HCPs to identify lands essential for the long-term conservation of *Deinandra conjugens* and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands proposed as critical habitat in this rule. If an HCP that addresses *D. conjugens* as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this proposed designation accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this proposed critical habitat designation.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analyses and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal to be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Deinandra conjugens* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for *Deinandra conjugens,* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES** section). If submitting comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: 1018–AH00'' and your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will 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. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Deinandra conjugens was listed a threatened species in 1998. In fiscal years 1998 through 2001, we have conducted, or are in the process of conducting, an estimated eight formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Deinandra conjugens.* We have also issued section 10(a)(1)(B) incidental take permits for approximately three projects in areas where the species occurs.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 2). Accordingly, the designation of critical habitat for *Deinandra conjugens* is not anticipated to have any significant incremental impacts on actions proposed by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Deinandra conjugens* since the listing in 1998. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agencies' actions.

(c) This rule is not expected to materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 2.—IMPACTS OF DEINANDRA CONJUGENS LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities the Federal Government carries out such as removing, thinning, or destroying *Deinandra conjugens* habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation.	None.
Private Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying *Deinandra conjugens* habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding).	None.

[1] This column represents the activities potentially affected by listing the *Deinandra conjugens* as a threatened species (October 13, 1998, 63 FR 54938) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

The areas we are proposing as critical habitat are already occupied, by either or both standing plants and the seed bank, by *Deinandra conjugens.* As a result, Federal agencies funding, permitting, or implementing activities in these areas are already required to consult with us under section 7 of the Act, to avoid jeopardizing the continued existence of this species. While the designation of critical habitat will require that agencies ensure, through section 7 consultation, that their activities do not destroy or adversely modify critical habitat, for the reasons discussed above we do not believe this will result in any additional regulatory burden on the Federal agencies or their applicants. As a result, this proposed rule, if finalized, would not result in a significant economic burden on Federal agencies or their applicants.

Therefore, we are certifying that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no regulatory flexibility analysis is necessary.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they proposed activities requiring Federal funds, permits or other authorization. Activities with a Federal nexus may not destroy or adversely modify critical habitat. However, as discussed in section 1, these activities are currently subject to equivalent restrictions as a result of the listing of the species, and no further restrictions are anticipated.

(b) This rule, as proposed, will not produce a Federal mandate of $100 million or greater in any year, that is, it

is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease current restrictions on private property concerning *Deinandra conjugens.* Due to current public knowledge of the species' protection, and the fact that critical habitat provides no additional incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by *Deinandra conjugens* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Deinandra conjugens*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Deinandra conjugens* because these lands do not support populations, or provide essential habitat. Therefore, critical habitat for *Deinandra conjugens* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Mark A. Elvin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), remove the entry for *Hemizonia conjugens* and add the following in alphabetical order under ''FLOWERING PLANTS'' to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Deinandra conjugens [=*Hemizonia conjugens*].	Otay tarplant	U.S.A. (CA), Mexico	Asteraceae—Sunflower.	T	649	17.96(b)	NA
*	*	*	*	*	*		*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the Otay tarplant (*Deinandra conjugens*) under paragraph (b) by adding an entry for *Deinandra conjugens* in alphabetical order under Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) Single-species critical habitat—flowering plants.

* * * * *

Family Asteraceae: *Deinandra conjugens* (Otay tarplant)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

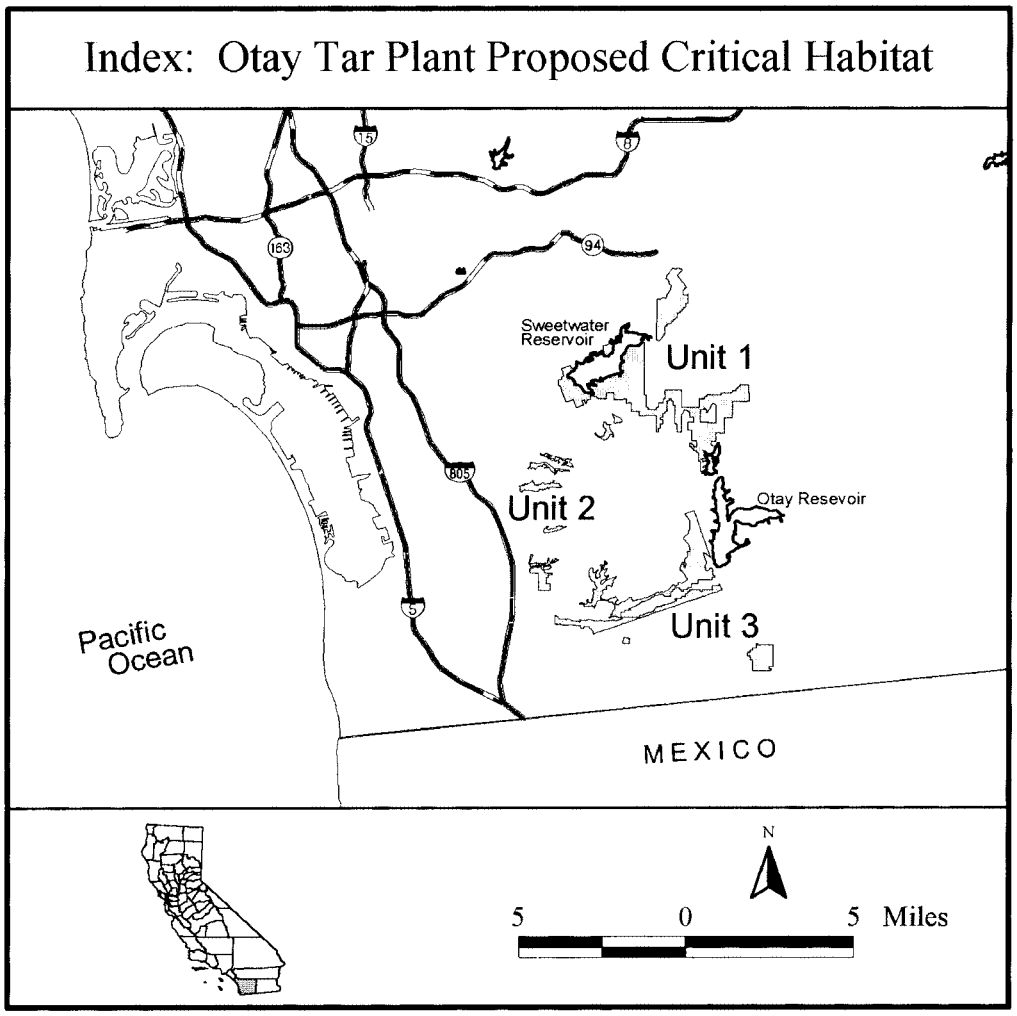
(2) The primary constituent elements of critical habitat for *Deinandra conjugens* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements for *Deinandra conjugens* consist of, but are not limited to:

(i) Soils with a high clay content (generally >25 percent) (or clay intrusions or lenses) that are associated with grasslands (native, non-native, and mixed), open coastal sage scrub, or maritime succulent scrub communities between 25 m (80 ft) and 300 m (1,000 ft) elevation;

(ii) Plant communities associated with *Deinandra conjugens* which include but are not limited to grasslands (native, non-native, and mixed), open coastal sage scrub, and maritime succulent scrub between 25 and 300 m (80 and 1,000 ft) elevation in southern San Diego County, California. Species common to these communities include *Nassella* spp. (needlegrasses), *Bloomeria crocea* (common goldenstar), *Dichelostemma pulchella* (blue dicks), *Chlorogalum* spp. (soap plants), *Bromus* spp. (brome grasses), *Avena* spp. (oats), *Deinandra fasciculata* (fascicled tarweed), *Lasthenia californica* (common goldfields), *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (flat-top buckwheat), *Lotus scoparius* (deer weed), *Salvia* spp. (sages), *Mimulus aurantiacus* (bush monkeyflower), *Malacothamnus fasciculatum* (bushmallow), *Malosma laurina* (laurel sumac), *Rhus ovata* (sugar bush), *R. integrifolia* (lemonade berry), *Lycium* spp. (boxthorns), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), *Opuntia* spp. (prickly pear and cholla cactuses), *Ferocactus viridescens* (coastal barrel cactus), *Ambrosia chenopodiifolia* (San Diego bur sage), and *Dudleya* spp. (live-forevers). These plant communities contain natural openings that provide nesting, foraging, and dispersal sites for *D. conjugens* pollen and seed dispersal agents. These openings may have soil inclusions that contain a significantly higher concentration of sandy soils than the adjacent clay soils.

(iii) Critical habitat does not include non-Federal lands covered by a legally operative Habitat Conservation Plan issued under section 10(a)(1)(B) of the Act in which *Deinandra conjugens* is a covered species on or before June 13, 2001.

(iv) Existing features and structures, such as buildings, paved or unpaved roads, and other landscaped areas not containing primary constituent elements, are not considered critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.



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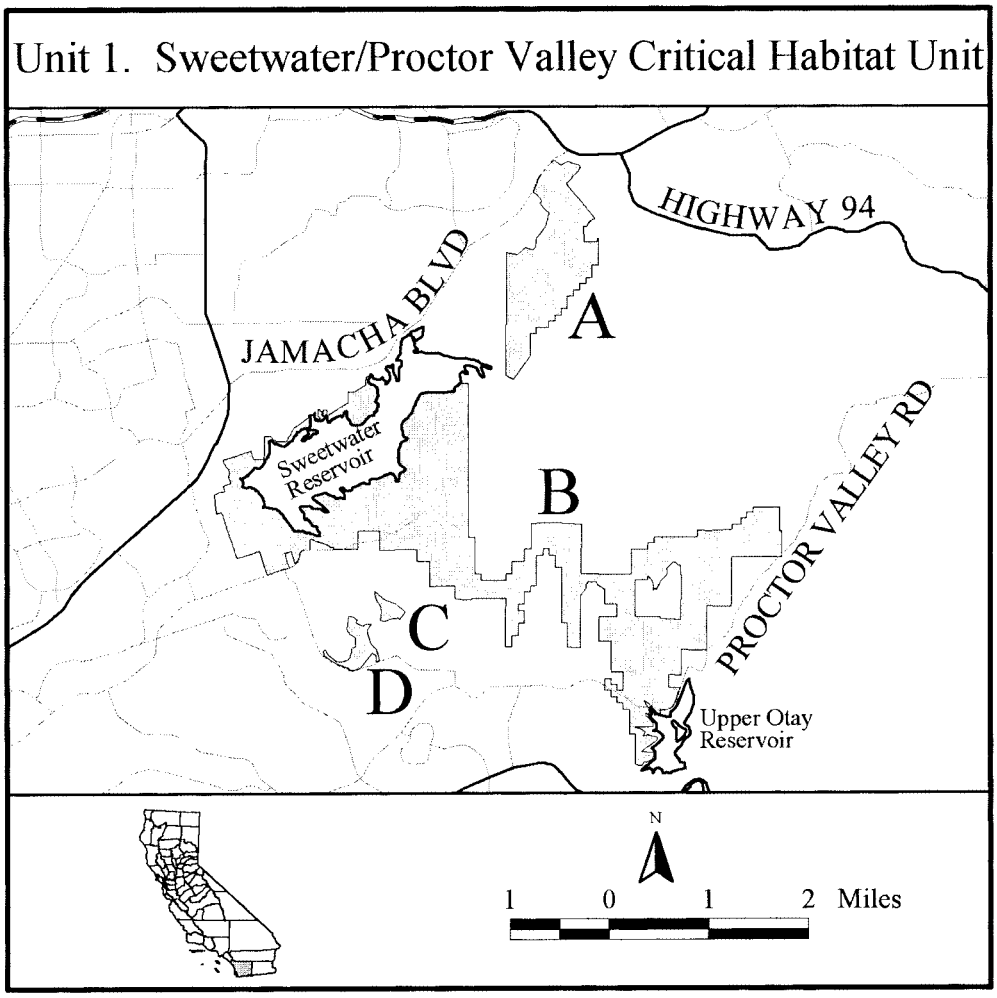
Map Unit 1: Sweetwater/Proctor Valley, San Diego County, California.

Unit 1a: From USGS 1:24,000 quadrangle map Jamul Mountains, beginning at the San Diego National Wildlife Refuge (SDNWR) boundary at UTM NAD27 x-coordinate 505100; thence south following UTM NAD27 coordinates (E, N): 505100, 3620400; 505000, 3620400; 505000, 3620200; 504900, 3620200; 504900, 3620100; 504800, 3620100; 504800, 3620000; 504700, 3620000; 504700, 3619900; 504600, 3619900; 504600, 3619700; 504500, 3619700; 504500, 3619600; 504400, 3619600; 504400, 3619500; 504300, 3619500; 504300, 3619400; 504100, 3619400; 504100, 3619300; 504000, 3619300; thence south to the SDNWR boundary at UTM x-coordinate 504000; thence south following the SDNWR boundary returning to the point of beginning on the SDNWR boundary at UTM x-coordinate 505100.

Unit 1b: From USGS 1:24,000 quadrangle maps National City and Jamul Mountains, beginning at the Sweetwater Reservoir at UTM NAD27 y-coordinate 3618500; thence east and following UTM NAD27 coordinates 503000, 3618500; 503000, 3616000; 503100, 3616000; 503100, 3615400; 503200, 3615400; 503200, 3615300; 503600, 3615300; 503600, 3615400; 503700, 3615400; 503700, 3615600; 503900, 3615600; 503900, 3615800; thence east to the Otay Water District (OWD) boundary at UTM NAD27 y-coordinate 3615800; thence north following the OWD boundary to the City of Chula Vista Preserve Design (CCVPD) boundary; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 505900; thence north following UTM NAD27 coordinates 505900, 3615900; 506000, 3615900; 506000, 3616000; 506700, 3616000, 506700, 3616100; thence east to the SDNWR boundary at UTM NAD27 y-coordinate 3616100; thence east following the SDNWR boundary to UTM NAD27 x-coordinate 507200; thence north following UTM NAD27 coordinates 507200, 3616200; 507400, 3616200; 507400, 3616300; 507500, 3616300; 507500, 3616400; 507600, 3616400; thence north to the County of San Diego Major Amendment (CSDMjA) boundary at UTM NAD27 x-coordinate 507600; thence east following the CSDMjA boundary to the SDNWR boundary; thence south following the SDNWR boundary to the CSDMjA boundary; thence south following the CSDMjA boundary to UTM NAD27 x-coordinate 506100; thence south following UTM NAD27 coordinates 506100, 3613100; 506000, 3613100; thence north to the City of Chula Vista (CCV) boundary at UTM NAD27 x-coordinate 506000; thence northwest following the CCV boundary to UTM NAD27 x-coordinate 505700; thence north following UTM NAD27 coordinates 505700, 3612800; 505600, 3612800; 505600, 3613200; 505500, 3613200; 505500, 3613300; 505400, 3613300; 505400, 3613400; 505300, 3613400; 505300, 3613500; 505200, 3613500; 505200, 3613700; 505300, 3613700; 505300, 3613600; 505400, 3613600; 505400, 3613500; 505500, 3613500; 505500, 3613800; 505300,

3613800; 505300, 3614300; 505100, 3614300; 505100, 3614700; 505400, 3614700; 505400, 3614900; 505200, 3614900; 505200, 3615100; thence north to the CCVPD boundary at UTM NAD27 x-coordinate 505200; thence west following the CCVPD boundary to the OWD boundary; thence south following the OWD boundary to UTM NAD27 x-coordinate 504600; thence north following UTM NAD27 coordinates 504600, 3614600; 504500, 3614600; 504500, 3615500; 504400, 3615500; 504400, 3615700; 504300, 3615700; 504300, 3615800; 504200, 3615800; 504200, 3615700; 504100, 3615700; 504100, 3615200; 504000, 3615200; 504000, 3615100; 503900, 3615100; 503900, 3614900; 503800, 3614900; 503800, 3614800; 503900, 3614800; 503900, 3614600; 503800, 3614600; 503800, 3614400; 503700, 3614400; thence south to the OWD boundary at UTM NAD27 x-coordinate 503700; thence west following the OWD boundary to the Multiple Habitat Planning Area (MHPA) boundary; thence west following the MHPA to the SDNWR boundary; thence south following the SDNWR boundary to UTM NAD27 y-coordinate 3616100; thence west following UTM NAD27 coordinates 501200, 3616100; 501200, 3615800; 500800, 3615800; thence north to the Sweetwater Authority Water District (SWAWD) boundary at UTM NAD27 x-coordinate 500800; thence west following the SWAWD boundary to the County of San Diego Minor Amendment (CSDMnA) boundary; thence west following the CSDMnA boundary to the SWAWD boundary; thence west following the SWAWD boundary to approximately UTM NAD27 coordinates 5014000, 3618650 where the SWAWD meets the Sweetwater Reservoir shoreline; thence south following the Sweetwater Reservoir shoreline back to the point of beginning at UTM NAD27 y-coordinate 3618500; excluding lands bounded by the CCVPD boundary at UTM NAD27 x-coordinate 505800; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 506100; thence north and following UTM NAD27 coordinates 506100, 3614700; 505700, 3614700; 505700, 3615300; 505800, 3615300; thence north returning to the point of beginning on the CCVPD boundary at UTM NAD27 x-coordinate 505800; excluding the proposed State Route 125 easement.

Unit 1 c and d: From USGS 1:24,000 quadrangle map Jamul Mountains, the lands bounded by the CCVPD boundary at Horseshoe Bend and Gobblers Knob.



Map Unit 2: Chula Vista, San Diego County, California.

Unit 2a: From USGS 1:24,000 quadrangle maps National City, the lands bounded by the CCVPD boundary in Long Canyon and between UTM NAD27 coordinates 497900 and 499700.

Unit 2b and c: From USGS 1:24,000 quadrangle map National City, the lands bounded by the CCVPD boundary south of Otay Lakes Road and between UTM

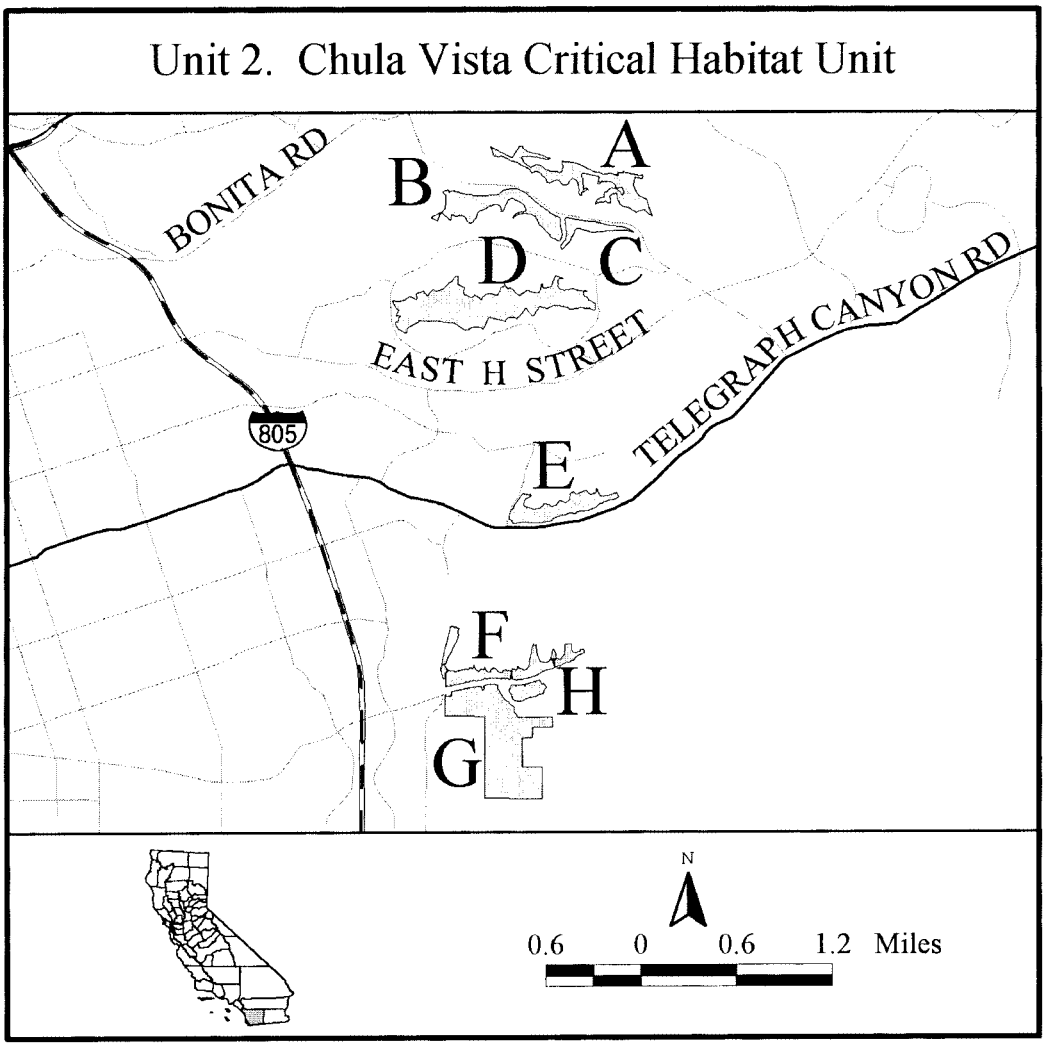
NAD27 x-coordinates 497300 and 499500.

Unit 2d: From USGS 1:24,000 quadrangle map National City, the lands bounded by the CCVPD boundary in Rice Canyon and between UTM NAD27 x-coordinates 496900 and 499100.

Unit 2e: From USGS 1:24,000 quadrangle maps National City and Imperial Beach, the lands bounded by the CCVPD boundary in Telegraph Canyon and between UTM NAD27 x-coordinates 498100 and 499300.

Unit 2f and h: From USGS 1:24,000 quadrangle map Imperial Beach, the lands bounded by the CCVPD boundary in Poggi Canyon and between UTM NAD27 x-coordinates 497400 and 499000.

Unit 2g: From USGS 1:24,000 quadrangle map Imperial Beach, beginning at the CCV boundary at UTM NAD27 x-coordinate 498600; thence south following UTM NAD27 coordinates 498600, 3607300; 498400, 3607300; 498400, 3607200; 498300, 3607200; 498300, 3606900; 498500, 3606900; thence south to the CCV boundary at UTM NAD27 x-coordinate 498500; thence west following the CCV boundary to the CCVPD boundary; thence west following the CCVPD boundary to the CCV boundary; thence east returning to the point of beginning on the CCV boundary at UTM NAD27 x-coordinate 498600.



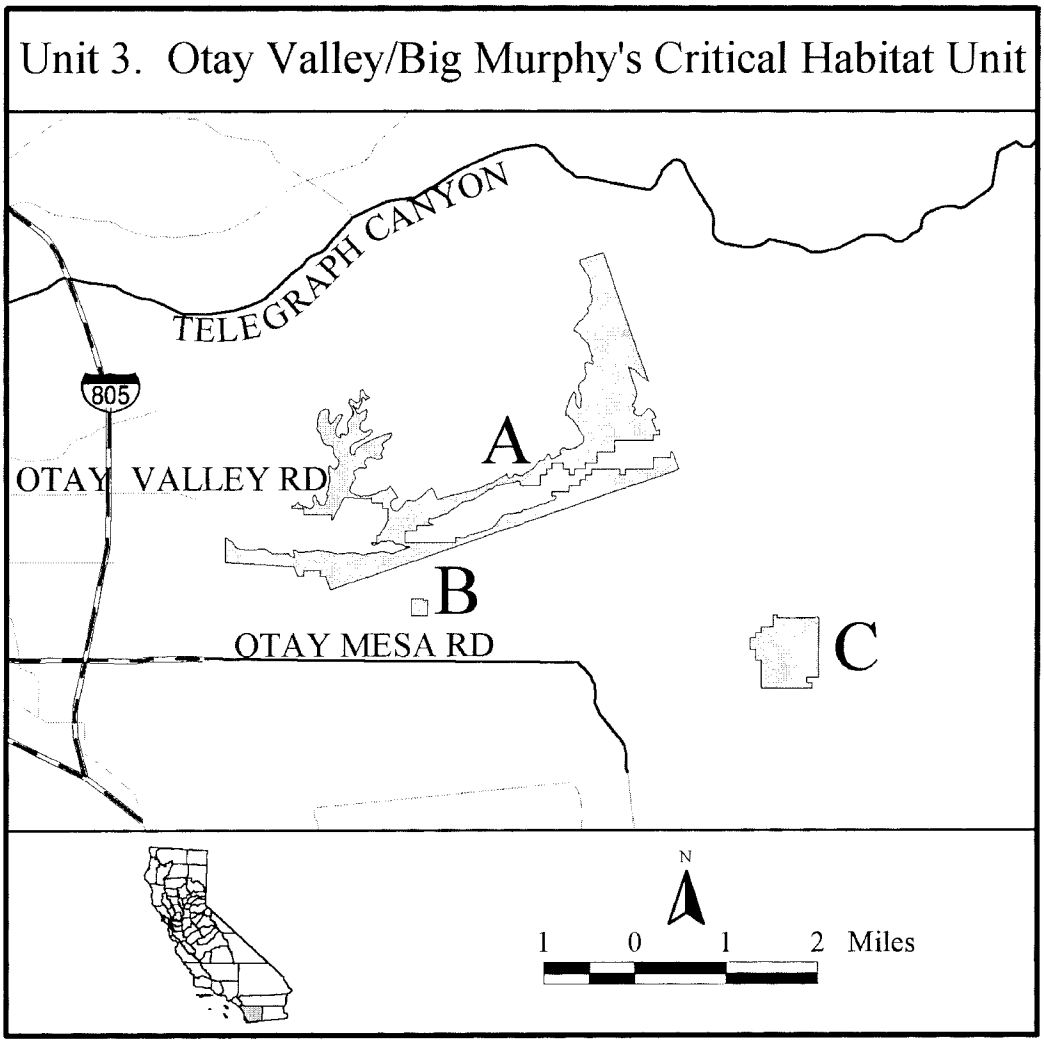
Map Unit 3: Otay Valley/Big Murphy's, San Diego County, California.

Unit 3a: From USGS 1:24,000 quadrangle maps Imperial Beach, Otay Mesa, and Jamul Mountains beginning on the CCVPD boundary at UTM NAD27 x-coordinate 499900; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 506400; thence south following the UTM NAD27 coordinates 506400, 3607200; 506300, 3607200; 506300, 3607100; 505600, 3607100; 505600, 3606900; 505300, 3606900; 505300, 3606700; 505100, 3606700; 505100, 3606600; 504900, 3606600; 504900, 3606500; 504800, 3606500; 504800, 3606600; 504700, 3606600; 504700, 3606700; 504500, 3606700; 504500, 3606600; 504400, 3606600; 504400, 3606500; 504300, 3606500; 504300, 3606300; thence west to the CCVPD boundary at UTM y-coordinate 3606300; thence north following the CCVPD boundary to UTM NAD27 x-coordinate 502400; thence south following UTM NAD27 coordinates 502100, 3605600; 502100, 3605500; 501900, 3605500; 501900, 3605300; 502800, 3605300; 502800, 3605400; thence east to the CCVPD boundary at UTM NAD27 y-coordinate 3605400; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 504500; thence north following UTM NAD27 coordinates 504500, 3606200; 504800, 3606200;

504800, 3606300; 505000, 3606300; 505000, 3606400; 505100, 3606400; 505100, 3606500; 505200, 3606500; 505200, 3606600; 505700, 3606600; 505700, 3606500; 505800, 3606500; 505800, 3606600; 506300, 3606600; 506300, 3606800; 506600, 3606800; 506600, 3606900; thence east to the CCVPD boundary at UTM NAD27 y-coordinate 3606900; thence south following the CCVPD boundary to the CCV boundary; thence west following the CCV boundary to the CCVPD boundary; thence north following the CCVPD boundary to the UTM NAD27 y-coordinate 3604700; thence west following UTM NAD27 coordinates 500400, 3604700; 500400, 3604800; 500100, 3604800; 500100, 3604700; thence west to the CCV boundary at UTM NAD27 y-coordinate 3604700; thence north along the CCV boundary to the CCVPD boundary; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 501300; thence north following UTM NAD27 coordinates 501300, 3605300; 501400, 3605300; thence north to the CCVPD boundary at UTM NAD27 x-coordinate 501400; thence north following the CCVPD boundary to UTM NAD27 x-coordinate 501600; thence north following UTM NAD27 coordinates 501600, 3605900; 501500, 3605900; 501500, 3606000; 501300, 3606000; 501300, 3606100; thence north to the CCVPD boundary at UTM NAD27 x-coordinate 501300; thence east following the CCVPD boundary to UTM NAD27 y-coordinate 3605700; thence east following UTM NAD27 coordinates 500600, 3605700; 500600, 3605800; 500100, 3605800; 500100, 3605900; 499900, 3605900; thence north returning to the point of beginning on the CCVPD boundary at UTM NAD27 x-coordinate 499900; excluding the proposed State Route 125 easement.

Unit 3b: From USGS 1:24,000 quadrangle map Otay Mesa, the southern half of the Immigration and Nationalization Service land at Brownfield.

Unit 3c: From USGS 1:24,000 quadrangle map Otay Mesa, beginning on the CSDMjA boundary at UTM NAD27 y-coordinate 3604000; thence south following the CSDMjA boundary to UTM NAD27 x-coordinate 509200; thence south following UTM NAD27 coordinates 509200, 3602900; 509000, 3602900; 509000, 3602800; 509100, 3602800; 509100, 3602700; 508200, 3602700; 508200, 3603200; 508100, 3603200; 508100, 3603400; 508000, 3603400; 508000, 3603600; 508100, 3603600; 508100, 3603700; 508200, 3603700; 508200, 3603800; 508400, 3603800; 508400, 3604000; returning to the point of beginning on the CSDMjA boundary at UTM NAD27 y-coordinate 3604000.



Dated: June 1, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–14309 Filed 6–12–01; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
June 13, 2001

Part IV

Environmental Protection Agency

40 CFR Part 197

Public Health and Environmental Radiation Protection Standards for Yucca Mountain, NV; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[FRL–6995–7]

RIN 2060–AG14

Public Health and Environmental Radiation Protection Standards for Yucca Mountain, NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We, the Environmental Protection Agency (EPA), are promulgating public health and safety standards for radioactive material stored or disposed of in the potential repository at Yucca Mountain, Nevada. Section 801 of the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486) directs us to develop these standards. Section 801 of the EnPA also requires us to contract with the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. The health and safety standards promulgated by EPA are to be ''based upon and consistent with'' the findings and recommendations of NAS. On August 1, 1995, NAS released its report (the NAS Report), titled ''Technical Bases for Yucca Mountain Standards.'' We have taken the NAS Report into consideration as the EnPA directs.

The Nuclear Regulatory Commission (NRC) will incorporate these final standards into its licensing regulations. The Department of Energy (DOE) must demonstrate compliance with these standards. The NRC will use its licensing regulations to determine whether DOE has demonstrated compliance with our standards prior to receiving the necessary licenses to store or dispose of radioactive material in Yucca Mountain.

DATES: *Effective Date:* This rule becomes effective July 13, 2001.

ADDRESSES: *Documents relevant to the rulemaking.* You can find and access materials relevant to this rulemaking in: (1) Docket No. A–95–12, located in Waterside Mall Room M–1500 (first floor, near the Washington Information Center), 401 M Street, SW., Washington, DC 20460; (2) an information file in the Government Publications Section, Lied Library, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada 89154; and (3) an information file in the Public Library in Amargosa Valley, Nevada 89020.

Background documents for this action. We have prepared additional documents that provide more detailed technical background in support of these standards. You may obtain copies of the Background Information Document (BID), the Economic Impact Analysis (EIA), the Response to Comments document, and the Executive Summary of the NAS Report, by writing to the Office of Radiation and Indoor Air (6608J), U.S. Environmental Protection Agency, Washington, DC 20460-0001. We placed these documents into the docket and information files. You also may find them on our Internet site for Yucca Mountain (see the *Additional Docket and Electronic Information* section later in this document).

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Washington, DC. 20460–0001; telephone 202–564–9310.

SUPPLEMENTARY INFORMATION:

Whom Will These Standards Regulate?

The DOE is the only entity directly regulated by these standards. Before it may accept waste at the Yucca Mountain site, DOE must obtain a license from NRC. Thus, DOE will be subject to our standards, which NRC will implement through its licensing proceedings. Our standards affect NRC only because, under the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486, 42 U.S.C. 10141 n. (1994)), NRC must modify its licensing requirements, as necessary, to make them consistent with our final standards.

Additional Docket and Electronic Information

When may I examine information in the docket? You may inspect the Washington, DC, docket (phone 202–260–7548) on weekdays (8 a.m.-5:30 p.m.). The docket personnel may charge you a reasonable fee for photocopying docket materials (40 CFR part 2).

You may inspect the information file located in the Lied Library at the University of Nevada-Las Vegas, Research and Information Desk, Government Publications Section (702–895-2200) when classes are in session. Hours vary based upon the academic calendar, so we suggest that you call ahead to be certain that the library will be open at the time you wish to visit (for a recorded message, call 702–895–2255).

You may inspect the information file in the Public Library in Amargosa Valley, Nevada (phone 775–372–5340). As of this date, the hours are Tuesday through Thursday (10 a.m.–7 p.m.); Friday (10 a.m.–5 p.m.); and Saturday (10 a.m.–2 p.m.). The library is closed daily from 12:30 p.m.–1 p.m. It also is closed Sundays and Mondays.

Can I access information by telephone or via the Internet? Yes. You may call our toll-free information line (800–331–9477) 24 hours per day. By calling this number, you may listen to a brief update describing our rulemaking activities for Yucca Mountain, leave a message requesting that we add your name and address to the Yucca Mountain mailing list, or request that an EPA staff person return your call. You also can find information and documents relevant to this rulemaking on the World Wide Web at *http://www.epa.gov/radiation/yucca.* We also recommend that you examine the preamble and regulatory language for the proposed rule, which appeared in the **Federal Register** on August 27, 1999 (64 FR 46976).

What documents are referenced in today's action? We refer to a number of documents that provide supporting information for our Yucca Mountain standards. All documents relied upon by EPA in regulatory decisionmaking may be found in our docket (Docket No. A–95–12). Other documents, e.g., statutes, regulations, proposed rules, are readily available from other public sources. The documents below are referenced most frequently in today's action.

Item No.

II–A–1 Technical Bases for Yucca Mountain Standards (The NAS Report), National Research Council, National Academy Press, 1995

V–A–4 Draft Environmental Impact Statement for Yucca Mountain, DOE/EIS–0250D, July 1999

V–A–5 Viability Assessment for Yucca Mountain, DOE/RW–0508, December 1998

V–B–1 Final Background Information Document (BID) for 40 CFR 197, EPA–402–R–01–004

V–C–1 Final Response to Comments Document for 40 CFR 197, EPA–402–R–01–009

V–A–17 Nevada Risk Assessment/Management Program (NRAMP)

Acronyms and Abbreviations

We use many acronyms and abbreviations in this document. These include:

ALARA-as low as reasonably achievable
APA-Administrative Procedure Act
BID-background information document
CAA-Clean Air Act
CEDE-committed effective dose equivalent
CG-critical group
DEIS-Draft Environmental Impact Statement
DOE–U.S. Department of Energy
DOE/VA–DOE's Viability Assessment
EIS-Environmental Impact Statement

EnPA-Energy Policy Act of 1992
EPA–U.S. Environmental Protection Agency
GCD-greater confinement disposal
HLW-high-level radioactive waste
IAEA-International Atomic Energy Agency
ICRP-International Commission on Radiological Protection
LLW-low-level radioactive waste
MCL-maximum contaminant level
MCLG-maximum contaminant level goal
MTHM-metric tons of heavy metal
NAS-National Academy of Sciences
NCRP-National Council on Radiation Protection and Measurements
NEPA-National Environmental Policy Act
NESHAPs-National Emission Standards for Hazardous Air Pollutants
NID-negligible incremental dose
NIR-negligible incremental risk
NRC–U.S. Nuclear Regulatory Commission
NRDC-Natural Resources Defense Council
NTS-Nevada Test Site
NTTAA-National Technology Transfer and Advancement Act
NWPA-Nuclear Waste Policy Act of 1982
NWPAA-Nuclear Waste Policy Amendments Act of 1987
OMB-Office of Management and Budget
RCRA-Resource Conservation and Recovery Act
RME-reasonable maximum exposure
RMEI-reasonably maximally exposed individual
SAB-Science Advisory Board
SDWA-Safe Drinking Water Act
SNF-spent nuclear fuel
TDS-total dissolved solids
TRU-transuranic
UIC-underground injection control
UMRA-Unfunded Mandates Reform Act of 1995
UNSCEAR-United Nations Scientific Committee on the Effects of Atomic Radiation
USDW-underground source of drinking water
WIPP LWA-Waste Isolation Pilot Plant Land Withdrawal Act of 1992

Outline of Today's Action

I. What is the History of Today's Action?
A. What is the Relationship of 40 CFR part 191 to the Yucca Mountain Standards?
1. Evolution of 40 CFR part 191
2. The Role of 40 CFR part 191 in the Development of 40 CFR part 197
II. Background Information
A. In Making Our Final Decisions, How Did We Incorporate Public Comments on the Proposed Rule?
1. Introduction and the Role of Comments in the Rulemaking Process
2. How Did We Respond to General Comments on Our Proposed Rule?
B. What Are the Sources of Radioactive Waste?
C. What Types of Health Effects Can Radiation Cause?
D. What Are the Major Features of the Geology of Yucca Mountain and the Disposal System?
E. Background on and Summary of the NAS Report
1. What Were NAS's Findings (''Conclusions'') and Recommendations?
III. What Does Our Final Rule Do?
A. What Is the Standard for Storage of the Waste? (Subpart A, §§ 197.1 through 197.5)
B. What Are the Standards for Disposal? (§§ 197.11 through 197.36)
1. What Is the Standard for Protection of Individuals? (§§ 197.20 and 197.25)
a. Is the Limit on Dose or Risk?
b. What Factors Can Lead to Radiation Exposure?
c. What Is the Level of Protection for Individuals?
d. Who Represents the Exposed Population?
e. How Do Our Standards Protect the General Population?
f. What Do Our Standards Assume About the Future Biosphere?
g. How Far Into the Future Is It Reasonable To Project Disposal System Performance?
2. What Are the Requirements for Performance Assessments and Determinations of Compliance? (§§ 197.20, 197.25, and 197.30)
a. What Limits Are There on Factors Included in the Performance Assessments?
b. What Limits Are There on DOE's Elicitation of Expert Opinion?
c. What Level of Expectation Will Meet Our Standards?
d. Are There Qualitative Requirements to Help Assure Protection?
3. What Is the Standard for Human Intrusion? (§ 197.25)
4. How Does Our Rule Protect Ground Water? (§ 197.30)
a. Is the Storage or Disposal of Radioactive Material in the Yucca Mountain Repository Underground Injection?
b. Does the Class-IV Well Ban Apply?
c. What Ground Water Does Our Rule Protect?
d. How Far Into the Future Must DOE Project Compliance With the Ground Water Standards?
e. How Will DOE Identify Where to Assess Compliance With the Ground Water Standards?
f. Where Will Compliance With the Ground Water Standards be Assessed?
IV. Responses to Specific Questions for Public Comment
V. Severability
VI. Regulatory Analyses
A. Executive Order 12866
B. Executive Order 12898
C. Executive Order 13045
D. Executive Order 13084
E. Executive Order 13132
F. National Technology Transfer and Advancement Act
G. Paperwork Reduction Act
H. Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 5 U.S.C. 601 et seq.
I. Unfunded Mandates Reform Act
J. Executive Order 13211

I. What Is the History of Today's Action?

Spent nuclear fuel (SNF) and high-level radioactive waste (HLW) have been produced since the 1940s, mainly as a result of commercial power production and defense activities. Since then, the proper disposal of these wastes has been the responsibility of the Federal government. The Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425) formalizes the current Federal program for the disposal of SNF and HLW by:

(1) Making DOE responsible for siting, building, and operating an underground geologic repository for the disposal of SNF and HLW;

(2) Directing us to set generally applicable environmental radiation protection standards based on authority established under other laws; [1] and

(3) Requiring NRC to implement our standards by incorporating them into its licensing requirements for SNF and HLW repositories.

This general division of responsibilities continues for the Yucca Mountain disposal system. Thus, today we are establishing public health protection standards (specific to the Yucca Mountain site, rather than generally applicable). The NRC will issue implementing regulations for this rule. The DOE will submit a license application to NRC. The NRC then will determine whether DOE has met the standards and whether to issue a license for Yucca Mountain. The NRC will require DOE to comply with all of the applicable provisions of 40 CFR part 197 before authorizing DOE to receive radioactive material at the Yucca Mountain site.

In 1985, we established generic standards for the management, storage, and disposal of SNF, HLW, and transuranic (TRU) radioactive waste (see 40 CFR part 191, 50 FR 38066, September 19, 1985), which apply to any facilities for the storage or disposal of these wastes, including Yucca Mountain. In 1987, the U.S. Court of Appeals for the First Circuit remanded the disposal standards in 40 CFR part 191 (*NRDC* v. *EPA,* 824 F.2d 1258 (1st Cir. 1987)). As discussed below, we later amended and reissued these standards to address issues that the court raised.

[1] These laws include the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011–2296); Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix 1).

Also in 1987, the Nuclear Waste Policy Amendments Act (NWPAA, Pub. L. 100–203) amended the NWPA by, among other actions, selecting Yucca Mountain, Nevada, as the only potential site that DOE should characterize for a long-term geologic repository.

In October 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579) and the EnPA became law. These statutes changed our obligations concerning radiation standards for the Yucca Mountain candidate repository. The WIPP LWA:

(1) Reinstated the 40 CFR part 191 disposal standards, except those portions that were the specific subject of the remand by the First Circuit;

(2) required us to issue standards to replace the portion of the challenged standards remanded by the court; and

(3) exempted the Yucca Mountain site from the 40 CFR part 191 disposal standards.

We issued the amended 40 CFR part 191 disposal standards, which addressed the judicial remand, on December 20, 1993 (58 FR 66398).

The EnPA, enacted in 1992, set forth our responsibilities as they relate to the Yucca Mountain repository. In the EnPA, Congress directed us to set public health and safety radiation standards for Yucca Mountain. Specifically, section 801(a)(1) of the EnPA directs us to ''promulgate, by rule, public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site.'' The EnPA also directed us to contract with NAS to conduct a study to provide us with its findings and recommendations on reasonable standards for protection of public health and safety. Moreover, it provided that our standards shall be the only such standards applicable to the Yucca Mountain site and are to be based upon and consistent with NAS's findings and recommendations. On August 1, 1995, NAS released its report, ''Technical Bases for Yucca Mountain Standards'' (the NAS Report) (Docket No. A–95–12, Item II–A–1).

A. What Is the Relationship of 40 CFR Part 191 to the Yucca Mountain Standards?

Throughout today's action, we refer to the provisions of 40 CFR part 191 to support the decisions we made regarding the components of the final Yucca Mountain rule. Pursuant to section 8(b)(2) of the WIPP LWA, 40 CFR part 191 is not applicable to the characterization, licensing, construction, operation, or closure of the Yucca Mountain repository. We believe, however, that while 40 CFR part 191 is not directly applicable to Yucca Mountain, because it contains the fundamental components for the protection of public health and the environment that apply to any SNF, HLW, or TRU radioactive waste repository, certain of its basic concepts must be applied to Yucca Mountain as appropriate. Further, because 40 CFR part 191 provides fundamental support for today's rule, we believe it is useful to explain here the process by which 40 CFR part 191 evolved.

1. Evolution of 40 CFR Part 191

We used the rulemaking for 40 CFR part 191 to define the fundamental components of any environmental standard applicable to the disposal of SNF, HLW, and TRU radioactive waste. In our proposal (47 FR 58196, December 29, 1982), we recognized two basic considerations regarding the disposal of SNF, HLW, and TRU radioactive waste:

- The intent of disposal is to isolate the wastes from the environment for a very long time, longer than any time over which active institutional controls might be effective; and
- The disposal systems will be designed to allow only very small releases to the environment, if not disturbed. A principal concern is the possibility of accidental releases due to unintended events or failure of engineered barriers.

These considerations mean that any standard that we establish and that NRC and DOE implement: (1) Can only be implemented during development and operation of the repository, (2) must address unintentional releases, and (3) must accommodate significant uncertainties. (See 47 FR 58198, December 29, 1982)

From these considerations, we proposed standards consisting of Containment Requirements, which limit the total amount of radionuclides that may enter the environment over 10,000 years; Assurance Requirements, which provide several principles enhancing confidence that the containment requirements will be met; and Procedural Requirements, which assure the proper application of the containment requirements. We also invited public comment on alternative approaches for the standards, specifically on the alternative of establishing exposure limits for individuals. Although the containment requirements, as proposed, were designed to protect people and the environment for a long time, we did not propose an individual exposure limit. We believed the compliance point for such a limit would have to be some distance from the repository. Otherwise, it would have to ignore the risks from unplanned events such as human intrusion. It seemed likely that individuals located extremely near the repository or who intrude into the repository would receive doses far exceeding any existing or reasonably acceptable radiation limits.

EPA received substantial public comment on the 40 CFR part 191 proposal. As a direct result of information provided in many of the comments, we issued a final rule (50 FR 38066, September 19, 1985) that differed in many respects from the proposal. In addition to containment and assurance requirements, the final rule included two new components:

- Individual Protection Requirements, which protect members of the public for 1,000 years of undisturbed performance; and
- Ground Water Protection Requirements, which protect ''special sources of ground water'' for 1,000 years of undisturbed performance.

The risk objectives for the containment requirements in the final rule maintained the same limiting level of health impacts as the proposal (1000 fatal cancers over 10,000 years for a repository containing 100,000 metric tons of heavy metal (MTHM)); however, we did modify the radionuclide-specific release limits to reflect updated performance analyses and updated information on the health effects of ionizing radiation. However, members of the public and our Science Advisory Board (SAB) expressed some concerns regarding residual risks and the ability of the licensee of any repository to demonstrate compliance with the standards given the uncertainties about these facilities that arise over the long time periods at issue (see the ''Report on the Review of Proposed Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes,'' January 1984, Docket No. A–95–12, Item V–A–21). To address these concerns, we incorporated the concept that the standards be met with ''reasonable expectation'' (§ 191.13(b)). Improved performance assessments indicated that the containment requirements could, in fact, be achieved by a variety of repository site/design combinations without significant effects on disposal costs. The final rule also defined for the first time a ''controlled area,'' or tract of land inside of which compliance is not evaluated. The concept of a controlled area was carried from the proposal, where it was included in the definition of ''accessible environment''. In addition, we added

''Guidance for Implementation,'' which replaced the previous procedural requirements section. It addresses some of the uncertainties with demonstrating compliance, such as the limitations of passive and active institutional controls and the degree of certainty required to demonstrate compliance with the individual and ground water protection requirements.

On the basis of public comments and our analyses of disposal systems, we incorporated individual protection requirements, applicable to all pathways of exposure effective for 1,000 years after disposal. In addition, our analyses of disposal systems supported setting ground water protection requirements to protect ''special sources of ground water'' to limits very similar to the Maximum Contaminant Levels (MCLs) at 40 CFR part 141. Public comment was very influential towards our incorporation of individual-protection requirements and ground-water protection requirements. To address the concerns expressed in the proposed rule related to protection of individuals who are extremely near the repository or who may intrude into the repository, the individual-protection requirements apply to any member of the public in the accessible environment for the case of undisturbed performance.

Legal challenges required us to reconsider the individual and ground water protection requirements in a subsequent rulemaking to amend 40 CFR part 191 (see 58 FR 66398, December 20, 1993). In 1987, the U.S. Court of Appeals for the First Circuit remanded subpart B of the 1985 standards to EPA for further consideration (*Natural Resources Defense Council, Inc.* v. *United States Environmental Protection Agency*, 824 F.2d 1258 (1st Cir. 1987)). The court questioned the appropriateness of the 1,000 year time frame for the individual protection requirement, the inter-relationship of the individual-protection requirement with the Safe Drinking Water Act (SDWA), and whether the Agency provided proper notice for the ground water protection requirements. For a more detailed discussion of the court's decision, see the preamble to the final amendments to 40 CFR part 191 (58 FR 66399–66411, December 20, 1993). The Waste Isolation Pilot Plant Land Withdrawal Act of 1992 reinstated the 1985 version of 40 CFR part 191 except for those portions of the rule that were the subject of the remand. In the final amendments to 40 CFR part 191, which replaced the remanded portions of 40 CFR part 191, we set the individual-protection requirement at 15 mrem/yr, calculated as an annual committed effective dose, for all pathways of exposure of any member of the public in the accessible environment, effective for 10,000 years after disposal. The ground water protection provisions limit the concentrations of radioactivity in any underground source of drinking water (USDW) in the accessible environment to the MCLs of the SDWA (40 CFR part 141).

2. The Role of 40 CFR Part 191 in the Development of 40 CFR Part 197

The EnPA directs us to develop site-specific public health protection standards for the Yucca Mountain site. To perform this task properly, we must answer two fundamental questions relative to the content of the standards. These two questions are:

(1) What are the relevant components of such standards?

(2) How can they be applied in more detail in a reasonable but conservative manner to the Yucca Mountain site?

There are two primary sources of information, insight, and guidance on repository performance standards in general and the standards applicable to the Yucca Mountain site in particular. These sources are the generic standards for land disposal of SNF, HLW, and TRU radioactive waste (40 CFR part 191) and the NAS report mentioned above. We relied heavily on these sources in developing the Yucca Mountain standards.

As described in the previous section, we developed 40 CFR part 191 as generic standards that apply to the land disposal of SNF, HLW, and TRU radioactive wastes. The components of generic standards like 40 CFR part 191, such as the individual-protection requirement, would all apply to some degree to any candidate site, but may not be equally important at any particular site. The WIPP LWA exempts the Yucca Mountain site from being licensed under the generic standards; however, the basic components of the generic standards clearly are valid components for consideration in developing standards that apply to a specific site. For example, in the EnPA, Congress specifically instructs us to ''prescribe the maximum annual effective dose equivalent to individual members of the public'' (EnPA section 801(a)(1)); such an individual dose standard is an integral part of 40 CFR part 191.

We believe that 40 CFR part 191 is a logical starting point for developing the site-specific Yucca Mountain standards because it contains the fundamental components necessary to evaluate whether a potential geologic repository site will perform satisfactorily relative to the protection of public health and the environment. Where appropriate in the site-specific context of the Yucca Mountain standards, we rely on the precedent of, and the reasoning in, 40 CFR part 191 throughout this preamble as support for including specific components in the Yucca Mountain standards. This statement does not mean that we have applied the 40 CFR part 191 standards to Yucca Mountain. Rather, we evaluated the 40 CFR part 191 standards de novo to determine whether it may be appropriate for us to apply any of them in the Yucca Mountain context. The NAS Report is relevant because it contains recommendations on scientific issues involved with geologic disposal in general, as well as specific recommendations based upon examination of the Yucca Mountain site. We refer to these two sources in the discussions that follow to explain why we structured the standards in a particular way and how we considered the public comments we received in response to the proposed standards.

We evaluated each generic component of 40 CFR part 191 on an individual basis to determine whether it is appropriate to apply it to the Yucca Mountain site as a component of a standard protective of public health. If we found it was appropriate to apply one of 40 CFR part 191's generic components to Yucca Mountain, we included that component in the Yucca Mountain standards. Next, we considered how to incorporate each appropriate component in a reasonable, but conservative, manner to the site-specific conditions at the Yucca Mountain site. The NAS Report was a primary source of guidance and insight in answering that question, supplemented by the available data on the characteristics of the site including information on the distribution, lifestyles, and other demographic characteristics of the population in the vicinity of the site. The BID accompanying the 40 CFR part 197 standards contains much of this information. Other sources of information, such as DOE's Yucca Mountain DEIS, are noted in the following discussions as appropriate.

Before selecting and formulating specific elements of the standards, we must consider that radiological hazards to public health from a deep geologic repository come from the release of radionuclides and the subsequent exposure of the population to these radionuclides. This exposure occurs as a result of two different processes: the expected degradation over time (caused

by natural processes and events) of the natural and engineered barriers in the repository; and the breaching of these barriers by human activities. It is necessary to include both of these release modes in a health-based standard if it is to be protective. It also is necessary to develop standards against which it is possible, using reasonable means, to judge repository performance to determine compliance. Based upon basic principles of health physics, we believe that, any releases and consequent exposures to the public from the radionuclides emplaced into the repository could affect public health. Therefore, it is appropriate for us to evaluate the effects of these releases to determine whether we should address them in our standards. The NAS Report (Chapters 2 & 3) describes the potential pathways through which exposures to the public can occur from geologic disposal. Part 191 contains three provisions related to these potential release pathways that we believe are appropriate for application at Yucca Mountain. More specifically, 40 CFR part 191 contains an individual-protection standard (which limits exposure from all pathways by which an individual can be exposed), ground-water protection standards (aimed at the protection of ground water resources for use by individuals who may be exposed from using those resources), and a human-intrusion component of the containment requirements (aimed at protection from the inadvertent breaching of the repository containment barriers and subsequent exposures to the population). We believe these three basic components of the generic 40 CFR part 191 standards apply to the Yucca Mountain site because they represent avenues of exposure and mechanisms of release that are reasonably foreseeable given the conditions at Yucca Mountain.

We did not see the need to include in 40 CFR part 197 the containment requirements in 40 CFR part 191 for several reasons. First, we decided that, unlike the generic analyses supporting the development of release limits in 40 CFR part 191, the potential for large-scale dilution of radionuclides (and consequent wider exposure to large populations), through ground water and into surface water, as modeled in the supporting analyses for 40 CFR part 191, does not exist at Yucca Mountain. As discussed in Chapters 7 and 8 and Appendix IV of the BID and the preamble to proposed 40 CFR part 197 (64 FR 46991, August 27, 1999), the Yucca Mountain repository will be located in an unsaturated rock formation with limited amounts of infiltrating water passing through it and into the underlying tuff aquifer. Any releases into the ground water will be heavily constrained by the geologic features of the surrounding rocks to move in relatively confined pathways, rather than widely dispersed into the surrounding area around the repository. The aquifer is within a ground water system that discharges into arid areas having high evaporation rates and very little surface water, further limiting the potential for widespread population exposures.

As discussed in the preamble to the proposed 40 CFR part 191 (58 FR 46991), we developed the containment requirements in 40 CFR part 191 during the siting process mandated by the NWPA in the 1980s. In that context, population doses are an important consideration. The release limits in 40 CFR part 191 were found to be reasonably achievable for several types of geologic settings (including tuff) and would keep the risks to future populations acceptably small. Because the potential for significant exposures from the Yucca Mountain repository is primarily through a strongly directional ground water pathway (BID, Chapters 7 and 8), a ''cautious, but reasonable'' individual-protection standard will offer the same protection as the containment requirement included in 40 CFR part 191.

Although we included important components of 40 CFR part 191 in our Yucca Mountain standards, we did not simply replicate the provisions of 40 CFR part 191. For example, as discussed above, we do not include containment requirements because we believe that the individual-protection requirements adequately will protect the general population given the specific conditions at Yucca Mountain. Similarly, we do not include assurance requirements because we expect NRC to incorporate equivalent requirements into its implementing regulations. Because the assurance requirements in 40 CFR part 191 do not apply to NRC-licensed facilities [2], NRC will need to include assurance requirements in its implementing regulations for the Yucca Mountain repository. Measures that are effectively equivalent to the 40 CFR part 191 assurance requirements have been included in NRC's proposed 10 CFR part 63. The site-specific nature of the Yucca Mountain standards requires us to evaluate the unique characteristics of the Yucca Mountain site to develop the more detailed aspects of our standards, such as appropriate compliance points. The relative importance of the three regulatory components of 40 CFR part 191 in determining compliance in the regulatory review process is a direct reflection of site-specific conditions. For example, for WIPP, evaluating releases from human intrusion (by drilling to explore for or exploit the oil, gas and mineral resources present at the site) was the primary test for compliance against the standards because under expected undisturbed conditions no releases from the repository are anticipated. Compliance with the individual-protection standard was consequently based upon a scenario related to the migration of radionuclides from the repository to a near surface aquifer via an abandoned deep borehole. Consequently, we defined details for assessing an intrusion scenario at the WIPP site on the basis of current and historical practices regarding exploring for and recovering natural resources in the area. In contrast, the Yucca Mountain site is relatively poor in known attractive natural resources, other than ground water (see Chapter 8 of the BID). Therefore, consistent with NAS's recommendations, we adopted a stylized human-intrusion scenario for analysis. The NAS's recommendations and the data base of information available about the site allowed us to develop the specific details of the human-intrusion scenario, which we proposed in the draft rule. Comments we received during the public comment process also played an important role in framing the contents of the scenario. See the Response to Comments document for a more detailed discussion of these issues.

II. Background Information

A. In Making Our Final Decision, How Did We Incorporate Public Comments on the Proposed Rule?

1. Introduction and the Role of Comments in the Rulemaking Process

Section 801(a)(1) of the EnPA requires us to set public health and safety radiation protection standards for Yucca Mountain by rulemaking.[3] Pursuant to Section 4 of the Administrative Procedure Act (APA), regulatory agencies engaging in informal rulemaking must provide notice of a proposed rulemaking, an opportunity for the public to comment on the proposed rule, and a general statement of the basis and purpose of the final

[2] NRC agreed to include assurance requirements in its regulations for geologic repositories (10 CFR part 60, ''Disposal of High-Level Radioactive Wastes in Geologic Repositories'', 46 FR 13980, February 25, 1981).

[3] EnPA, Public Law No. 102–486, 106 Stat. 2776, 42 U.S.C. 10141 n. (1994).

rule.[4] The notice of proposed rulemaking required by the APA must ''disclose in detail the thinking that has animated the form of the proposed rule and the data upon which the rule is based.'' (*Portland Cement Association* v. *Ruckelshaus*, 486 F. 2d 375, 392–94 (D.C. Cir. 1973)) The public thus is enabled to participate in the process by making informed comments on the proposal. This provides us with the benefit of ''an exchange of views, information, and criticism between interested persons and the agency.'' (*Id.*)

There are two primary mechanisms by which we explain the issues raised in public comments and our reactions to them. First, we discuss broad or major comments in the succeeding sections of this preamble. Second, we are publishing a document, accompanying today's action, entitled ''Response to Comments'' (Docket No. A–95–12, Item V–C–1). The Response to Comments document provides more detailed responses to issues addressed in the preamble. It also addresses all other significant comments on the proposal. We gave all the comments we received, whether written or oral, consideration in developing the final rule.

2. How Did We Respond to General Comments on Our Proposed Rule?

We received many comments that addressed broad issues related to the proposed standards. Several commenters simply expressed their support for, or opposition to, the Yucca Mountain repository. The purpose of our standards is to ensure that any potential releases from the repository do not result in unacceptably high radiation exposures. Our standards make no judgment regarding the suitability of the Yucca Mountain site or whether NRC should issue a license for the site. Such a decision is beyond the scope of our statutory authority.

Some comments suggested our standards should consider radiation exposures from all sources because of the site's proximity to the Nevada Test Site (NTS) and other sources of potential contamination. We are aware of the other such sources of radionuclide contamination in the area. However, our mandate under the EnPA is to set standards that apply only to the storage or disposal of radioactive materials in the Yucca Mountain repository, not to these other sources. Our standards do follow the widely accepted principle that, to allow for the consideration of other exposures in developing a total acceptable dose, any specific source accounts for only a fraction of one's total exposure.

Several comments supported our role in setting standards for Yucca Mountain. Other comments thought that aspects of our standards duplicate NRC's implementation role. We believe the provisions of this rule clearly are within our authority and they are central to the concept of an public health protection standard. We also believe our standards leave NRC the necessary flexibility to adapt to changing conditions at Yucca Mountain or to impose additional requirements in its implementation efforts, if NRC deems them to be necessary.

We received some comments that suggested we should have provided more or better opportunities for public participation in our decision making process. For example, that we should have rescheduled public hearings, extended the public comment period, and provided alternatives to the public hearing process. We provided numerous opportunities and avenues for public participation in the development of these standards. For example, we held public hearings in four locations: Washington, DC; Las Vegas, NV; Amargosa Valley, NV; and Kansas City, MO. We also opened a 90-day public comment period and met with key stakeholders during that time, including Native American tribal groups. We fully considered all comments that we received through May 1, 2000. We have, in effect, provided more than 240 days of public comment on the proposal. These measures greatly exceed the basic requirements for notice-and-comment rulemaking, and they are in full compliance with the public participation requirements of the APA.

Some comments argued that our standards for Yucca Mountain do not protect Nevadans to the same level as New Mexicans around WIPP. In fact, the individual-protection standards for Yucca Mountain and WIPP are the same: 15 mrem annual committed effective dose equivalent. The differences between the standards for Yucca Mountain and those for WIPP begin with the various statutes and the subsequent regulations promulgated under those authorities. The WIPP LWA required us to apply our generic radioactive waste standards (40 CFR part 191) to WIPP. The standards for Yucca Mountain, which we promulgate under authority granted in the EnPA, are site-specific, and therefore there are some differences compared with the standards applicable to WIPP; however, we are confident that the standards provide essentially the same level of protection from radiation exposure at both sites, as the exposure limits are the same for both.

Many comments requested consideration of issues outside the scope of our authority for this rulemaking. For example, a number of commenters suggested that we should explore alternative methods of waste disposal, such as neutralizing radionuclides. Comments also expressed concern regarding risks of transporting radioactive materials to Yucca Mountain. Considerations like these all are outside the scope of this rulemaking. Congress delegated to us neither the authority to postpone the promulgation of these standards in favor of the development of other disposal methods nor the regulation of transportation of waste to Yucca Mountain.

B. What Are the Sources of Radioactive Waste?

Radioactive wastes result from the use of nuclear fuel and other radioactive materials. Today, we are issuing standards pertaining to SNF, HLW, and other radioactive waste (we refer to these items collectively as ''radioactive materials'' or ''waste'') that may be stored or disposed of in the Yucca Mountain repository. (When we discuss storage or disposal in this document in reference to Yucca Mountain, please understand that no decision has been made regarding the acceptability of Yucca Mountain for storage or disposal. To save space and to avoid excessive repetition, we will not describe Yucca Mountain as a ''potential'' repository; however, we intend this meaning to apply.) These standards apply only to facilities on the Yucca Mountain site.

Once nuclear reactions have consumed a certain percentage of the uranium or other fissionable material in nuclear reactor fuel, the fuel no longer is useful for its intended purpose. It then is known as ''spent'' nuclear fuel (SNF). Sources of SNF include:

(1) Commercial nuclear power plants;

(2) Government-sponsored research and development programs in universities and industry;

(3) Experimental reactors, such as liquid metal fast breeder reactors and high-temperature gas-cooled reactors;

(4) Federal government-controlled, nuclear-materials production reactors;

(5) Naval and other Department of Defense reactors; and

(6) U.S.-owned, foreign SNF.

It is possible to recover specific radionuclides from SNF through ''reprocessing,'' which is a process that dissolves the SNF, thus separating the radionuclides from one another. Radionuclides not recovered through

[4] 5 U.S.C. 553.

reprocessing become part of the acidic liquid wastes that DOE plans to convert into various types of solid materials. High-level wastes (HLW) are the highly radioactive liquid or solid wastes that result from reprocessing SNF. The only commercial reprocessing facility to operate in the United States, the Nuclear Fuel Services Plant in West Valley, New York, closed in 1972. Since then, there has been no reprocessing of commercial SNF in the United States. In 1992, DOE decided to phase out reprocessing of its SNF, which supported the defense nuclear weapons and propulsion programs. The SNF that does not undergo reprocessing prior to disposal becomes the waste form.

Where is the waste stored now? Today, storage of most SNF occurs in water pools or in above-ground dry concrete or steel canisters at more than 70 commercial nuclear-power reactor sites across the nation. Approximately three percent of SNF is produced by DOE, and is in storage at several DOE sites (see Appendix A, Figure A–2, of DOE's Draft Environmental Impact Statement (DEIS) for Yucca Mountain (DOE/EIS–0250D, Docket No. A–95–12, Item V–A–4)). The storage of HLW occurs at Federal facilities in Idaho, Washington, South Carolina, and New York.

What types of waste will be placed into Yucca Mountain? We anticipate that most of the waste emplaced in Yucca Mountain will be SNF and solidified HLW (in the rest of this document, HLW will refer to solidified HLW, unless otherwise noted). Under current NRC regulations (10 CFR 60.135), liquid HLW must be solidified, through processes such as vitrification (mixing the waste into glass), because non-solid waste forms are not to be stored or disposed of in Yucca Mountain. The DOE estimates that, by the year 2010, about 66,000 metric tons of SNF and 284,000 cubic meters (containing 450 million curies of radioactivity) of HLW in predisposal form and 2,900 cubic meters (containing 235 million curies) of the disposable form of HLW will be in storage at various locations around the country (DOE/RW–0006, Rev. 13, December 1997). For more information, see the waste descriptions in Appendix A of DOE's DEIS for Yucca Mountain (DOE/EIS–0250D, Docket No. A–95–12, Item V–A–4).

In the future, other types of radioactive materials could be identified for storage or disposal in the Yucca Mountain repository. These materials include highly radioactive low-level waste (LLW), known as ''greater-than-Class-C waste,'' and excess plutonium or other fissile materials resulting from the dismantlement of nuclear weapons. Because the plans for the disposal of these materials have not been finalized, neither NRC nor DOE has analyzed their impact upon the design and performance of the disposal system. However, regardless of the types of radioactive materials that finally are disposed of in Yucca Mountain, the disposal system must comply with 40 CFR part 197.

C. What Types of Health Effects Can Radiation Cause?

Ionizing radiation can cause a variety of health effects, which can be either ''non-stochastic'' or ''stochastic.'' Non-stochastic effects are those for which the damage increases with increasing exposure, such as destruction of cells or reddening of the skin. These effects appear in cases of exposure to large amounts of radiation. Stochastic effects are associated with long-term exposure to low levels of radiation. The types or severity of stochastic effects does not depend on the amount of exposure. Instead, the chance that a stochastic effect, such as cancer, will occur is assumed to increase with increasing exposure. For a detailed discussion of potential health effects related to exposure to radiation, see the preamble to the proposed rule (64 FR 46978–46979) and Chapter 6 of the BID.

Teratogenic effects can occur following fetal exposure. We believe that fetuses are more sensitive than are adults to the induction of cancer by radiation (see Chapter 6.5 of the BID). The fetus also is subject to radiation-induced physical malformations, such as small brain size (microencephaly), small head size (microcephaly), eye malformations, and slow growth prior to birth. Recent studies have focused on the apparently increased risk of severe mental retardation (as measured by the intelligence quotient). These studies indicate that the sensitivity of the fetus is greatest during 8 to 15 weeks following conception and continues, at a lower level, between 16 and 25 weeks.[5] We do not know exactly the relationship between mental retardation and dose; however, we believe it prudent to assume that there is a linear, non-threshold, dose-response relationship between these effects and the dose delivered to the fetus during the 8-to 15-week period (see Chapter 6.5 of the BID).

The NAS published its reviews of human health risks from exposure to low levels of ionizing radiation in a series of reports issued between 1972 and 1990. However, scientists still do not agree on how best to estimate the probability of cancer occurring as a result of the doses encountered by members of the public[6] because it is necessary to base estimates of these effects on the effects observed at higher doses (such as effects seen in the survivors of the Hiroshima and Nagasaki atomic bombs). Many organizations, including the National Council on Radiation Protection and Measurements (NCRP), the International Commission on Radiological Protection (ICRP), the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), and the National Radiological Protection Board of the United Kingdom, have recommended the use of the linear non-threshold model for estimating cancer risks.

Over the last decade, the scientific community has performed an extensive reevaluation of the doses and effects in the Hiroshima and Nagasaki survivors (see Chapter 6.3 of the BID). These studies have resulted in increased estimates (roughly threefold between 1972 and 1990) of the extrapolated risk of cancer occurring because of exposure to environmental (background) levels of radiation. Nonetheless, the estimated number of health effects induced by small incremental doses of radiation above natural background levels remains small compared with the total number of fatal cancers that occur from other causes. In addition, because cancers that result from exposure to radiation are the same as those that result from other causes, it may never be possible to identify them in human epidemiological studies (see Chapter 6 of the BID and the example discussed later in this section). This difficulty in identifying stochastic radiation effects does not mean that such effects do not occur. It also is possible, however, that effects do not occur as a result of these small doses. That is, there might be an exposure level below which there is no additional risk above the risk posed by natural background radiation. Sufficient data to prove either possibility scientifically is lacking. Thus, we believe that the best approach is to assume that the risk of cancer increases linearly starting at zero dose. In other

[5] Health Effects of Exposure to Low Levels of Ionizing Radiation, National Academy Press, Washington, DC, 1990.

[6] The risk of interest is not at or near zero dose, but that due to small increments of dose above the pre-existing background level. Background in the U.S. is typically about 3 millisieverts (mSv), that is, 300 millirem (mrem), effective dose equivalent per year, or 0.2 Sv (20 rem) in a lifetime. Approximately two-thirds of this dose is due to radon, and the balance comes from cosmic, terrestrial, and internal sources of exposure.

words, any increase in exposure to ionizing radiation results in a constant and proportionate increase in the potential for developing cancer.

The NAS Report stated that radiation causes about five cancers for every severe hereditary disorder caused by radiation exposure. Also, NAS concluded that nonfatal cancers are more common than fatal cancers. Despite this conclusion, NAS cited an ICRP study that judged that non-fatal cancers contribute less to overall health impact than fatal cancers ''because of their lesser severity in the affected individuals.'' (NAS Report pp. 37–39). We based our risk estimates for exposure of the population to low-dose-rate radiation on fatal cancers rather than on all cancers for the same reasons enumerated by NAS.

For radiation-protection purposes, we estimate (using a linear, non-threshold, dose-response model) an average risk for a member of the U.S. population of 5.75 in 100 (5.75×10^{-2}) fatal cancers per sievert (Sv)[7] (5.75×10^{-4} fatal cancers per rem) delivered at low dose rates.[8] For this calculation, as long as the exposure rate is low, the number of incremental cancers depends on the amount of radiation received, not the time period over which the dose is delivered, because the linear non-threshold model assumes that any incremental dose carries a risk (see Chapter 6.3 of the BID). For example, if 100,000 people randomly chosen from the U.S. population each received a uniform dose of 1 millisievert (mSv) (0.1 rem) to the entire body at a rate equivalent to that observed from natural background sources, the assumption is that approximately five to six people will die of cancer during their remaining lifetimes because of that exposure. These five to six deaths are in addition to the roughly 20,000 fatal cancers that would occur in the same population from other causes. The risk of fatal childhood cancer that results from exposure while in the fetal stage is about 3 in 100 (3×10^{-2}) per Sv (that is, 3×10^{-4} effects per rem). The risk of severe hereditary effects in offspring is estimated to be about 1×10^{-2} per Sv (1×10^{-4} effects per rem).[9] The risk of severe mental retardation from doses to a fetus is estimated to be greater per unit dose than the risk of cancer in the general population.[10] However, the period of increased sensitivity is much shorter. Hence, at a constant exposure rate, fatal cancer risk in the general population remains the dominant factor. Please see the BID for more details on this subject.

Of course, our risk estimates do contain some uncertainty. A recent uncertainty analysis published by NCRP (NCRP Report 126, Docket A–95–12, Item II–A–13) estimated that the actual risk of cancer from whole-body exposure to low doses of radiation could be between 1.5 times higher and 4.8 times lower (at the 90-percent confidence level) than our basic estimate of 5.75×10^{-2} per Sv (5.75×10^{-4} per rem). The risks of genetic abnormalities and mental retardation are less well known than those for cancer. Thus, they may include a greater degree of uncertainty. Further, existing epidemiological data does not rule out the existence of a threshold. If there is a threshold, exposures below that level would pose no additional risk above the risk posed by natural background radiation. However, in spite of uncertainties in the data and its analysis, estimates of the risks from exposure to low levels of ionizing radiation are known more clearly than are those for virtually any other environmental carcinogen. See Chapter 6 of the BID.

D. What Are the Major Features of the Geology of Yucca Mountain and the Disposal System?

The geology. Yucca Mountain is in southwestern Nevada approximately 100 miles northwest of Las Vegas. The eastern part of the site is on NTS. The northwestern part of the site is on the Nellis Air Force Range. The southwestern part of the site is on Bureau of Land Management land. The area has a desert climate with topography typical of the Basin and Range province. For more detailed descriptions of Yucca Mountain's geologic and hydrologic characteristics, and the disposal system, please see chapter 7 of the BID and the preamble to the proposed rule (64 FR 46979–46980). These documents are in the docket for this rulemaking (Docket No. A–95–12, Items III–B–2, V–B–1).

Yucca Mountain is made of layers of ashfalls from volcanic eruptions that happened more than 10 million years ago. The ash consolidated into a rock type called ''tuff,'' which has varying degrees of compaction and fracturing depending upon the degree of ''welding'' caused by temperature and pressure when the ash was deposited. Regional geologic forces have tilted the tuff layers and formed Yucca Mountain's crest (Yucca Mountain's shape is a ridge rather than a peak). Below the tuff is carbonate rock formed from sediments laid down at the bottom of ancient seas that existed in the area.

There are two general hydrologic zones within and below Yucca Mountain. The upper zone is called the ''unsaturated zone'' because the pore spaces and fractures within the rock are not filled entirely with water. Below the unsaturated zone, beginning at the water table, is the ''saturated zone,'' in which water completely fills the pores and fractures. Fractures in both zones could act as pathways that allow for faster contaminant transport than would the pores. The DOE plans to build the repository in the unsaturated zone about 300 meters below the surface and about 300 to 500 meters above the water table (DOE Viability Assessment (DOE/VA), Docket No. A–95–12, Item V–A–5).

There are two major aquifers in the saturated zone under Yucca Mountain. The upper one is in tuff. The lower one is in carbonate rock. Regional ground water in the vicinity of Yucca Mountain is believed to flow generally in a south-southeasterly direction. See Chapters 7 and 8 of the BID for a fuller discussion of the aquifers and the other geologic attributes of the Yucca Mountain region.

The disposal system. The NAS Report described the current concept of the potential disposal system as a system of engineered barriers for the disposal of radioactive waste located in the geologic setting of Yucca Mountain (NAS Report pp. 23–27). Based on DOE's current design, entry into the repository for waste emplacement would be on gradually downward sloping ramps that enter the side of Yucca Mountain. Section 114(d) of the NWPAA limits the capacity of the repository to 70,000 metric tons of SNF and HLW. Current DOE plans project that about 90 percent (by mass) would be commercial SNF; and 10 percent would be defense HLW

[7] The traditional unit for dose equivalent has been the rem. The unit ''sievert'' (Sv), a unit in the International System of Units that was adopted in 1979 by the General Conference on Weights and Measures, is now in general use throughout the world. One sievert equals 100 rem. The prefix ''milli'' (m) means one-thousandth. The individual-protection limit being finalized today may be expressed equivalently in either unit.

[8] ''Low dose rates'' here refers to dose rates on the order of or less than those from background radiation.

[9] The risk of severe hereditary effects in the first two generations, for exposure of the reproductive part of the population (with both parents exposed), is estimated to be 5×10^{-3} per Sv (5×10^{-5} per rem). For all generations, the risk is estimated to be 1.2×10^{-2} per Sv (1.2×10^{-4} per rem). For exposure of the entire population, which includes individuals past the age of normal child-bearing, each estimate is reduced to 40% of the cited value.

[10] Assuming a linear, non-threshold dose response, estimated risk for mental retardation due to exposure during the 8th through 15th week of gestation is 4×10^{-1} per Sv (4×10^{-3} per rem); under the same assumption, the estimated risk from the 16th to 25th week is 1×10^{-1} per Sv (1×10^{-3} per rem).

(NAS Report p. 23). The NAS further stated that within 100 years after initial emplacement of waste, the repository would be sealed by closing the opening to each of the tunnels and sealing the entrance ramps and shafts (NAS Report pp. 23, 26).

We expect the engineered barrier system to consist of at least the waste form (SNF assemblies or borosilicate glass containing the HLW), internal stabilizers for the SNF assemblies, and the waste packages holding the waste. Spent nuclear fuel assemblies consist of uranium oxide, fission products, fuel cladding, and support hardware, all of which will be radioactive (see the *What are the Sources of Radioactive Waste?* section above).

E. Background on and Summary of the NAS Report

Section 801(a)(2) of the EnPA directs us to contract with NAS to conduct a study to provide findings and recommendations on reasonable standards for protection of public health and safety. Section 801(a)(2) specifically calls for NAS to address the following three issues:

(A) Whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

(B) Whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

(C) Whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

On August 1, 1995, NAS submitted to us its report, entitled ''Technical Bases for Yucca Mountain Standards.'' The NAS Report is available for review in the docket (Docket No. A–95–12, Item II–A–1) and the information files described earlier. You can order the report from the National Academy Press by calling 800–624–6242 or on the World Wide Web at *http://www.nap.edu/catalog/4943.html.*

1. What Were NAS's Findings (''Conclusions'') and Recommendations?

The NAS Report contained a number of conclusions and recommendations. (The EnPA used the term ''findings;'' however, the NAS Report used the term ''conclusions''). A summary of NAS's conclusions appears below. See pages 1–14 of the NAS Report, or the preamble to our proposed rule (64 FR 46980), for a list of NAS's conclusions and recommendations. For details on public participation in our review of the NAS Report, please see the preamble to the proposed rule (64 FR 46980–46981).

Conclusions. The conclusions in the Executive Summary of the NAS Report (pp. 1–14) were:

(a) ''That an individual-risk standard would protect public health, given the particular characteristics of the site, provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk'' (later termed ''negligible incremental risk''). (This conclusion is the response to the issue Congress identified in EnPA Section 801(a)(2)(A));

(b) That the Yucca Mountain-related ''physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that the performance can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner;''

(c) ''That it is not possible to predict on the basis of scientific analyses the societal factors required for an exposure scenario. Specifying exposure scenarios therefore requires a policy decision that is appropriately made in a rulemaking process conducted by EPA;''

(d) ''That it is not reasonable to assume that a system for post-closure oversight of the repository can be developed, based on active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits.'' (This conclusion is the response to the issue Congress identified in EnPA section 801(a)(2)(B));

(e) ''That it is not possible to make scientifically supportable predictions of the probability that a repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.'' (This conclusion is the response to the issue Congress identified in EnPA Section 801(a)(2)(C)); and

(f) ''That there is no scientific basis for incorporating the ALARA (as low as reasonably achievable) principle into the EPA standard or USNRC (U.S. Nuclear Regulatory Commission) regulations for the repository.''

Recommendations. The recommendations in the Executive Summary of the NAS Report were:

(a) ''The use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;''

(b) ''That the critical-group approach be used'';

(c) ''That compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;'' and

(d) ''That the estimated risk calculated from the assumed intrusion scenario be no greater than the risk limit adopted for the undisturbed-repository case because a repository that is suitable for safe long-term disposal should be able to continue to provide acceptable waste isolation after some type of intrusion.''

Other Conclusions and Recommendations. The NAS made other conclusions and recommendations in addition to those listed above. Most of them were related to or supported those presented in the Executive Summary.

III. What Does Our Final Rule Do?

Our rule establishes public health and safety standards governing the storage and disposal of SNF, HLW, and other radioactive material in the repository at Yucca Mountain, Nevada.

As noted earlier, section 801(a)(1) of the EnPA gives us rulemaking authority to set ''public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site.'' The statute also directs us to develop standards ''based upon and consistent with the findings and recommendations of the National Academy of Sciences.'' Section 801(a)(2) of the EnPA directs us to contract with NAS to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. Because the EnPA directs us to act ''based upon and consistent with'' NAS's findings, a major issue in this rulemaking is whether we must follow NAS's findings and recommendations without exception or whether we have discretionary decision-making authority.

As we discussed in the preamble to the proposed rule, we believe we have discretionary decision-making authority and, therefore, are not required to adopt,

without exception, NAS's findings and recommendations. See 64 FR 46981–46983 for this discussion. As a practical matter, the difficulty of resolving this issue is reduced because NAS expressed some of the findings and recommendations in a non-binding manner. In other words, in many instances NAS either stated its findings and recommendations as starting points for the rulemaking process or recognized those recommendations that involve public policy issues that are addressed more properly in this public rulemaking proceeding. However, the report also contains some findings and recommendations stated in relatively definite terms. These issues present most squarely the question of whether we are to treat all of NAS's findings and recommendations as binding.

Whether the EnPA binds us to following exactly NAS's findings and recommendations is a question that warrants close attention because it affects the scope of our rulemaking. If we must follow every view expressed in the NAS Report, we would have to treat any such issue as having been addressed conclusively by NAS. We would not need to entertain public comment upon the affected issues because the outcome would be predetermined by NAS.

We believe the EnPA does not bind us absolutely to follow the NAS Report. Instead, we used it as the starting point for this rulemaking. As Congress directed, today's rule is based upon and consistent with the NAS findings and recommendations. We were guided by the panel's findings and recommendations because of the special role Congress gave it and because of NAS's scientific expertise. However, the entirety of our standards is the subject of this rulemaking. Therefore, we have not treated the views expressed by NAS as necessarily dictating the outcome of this rulemaking, thereby foreclosing public scrutiny of important issues. For the reasons described below, we believe this interpretation of the EnPA is both consistent with the statute and prudent, because it avoids potential constitutional issues. Further, this interpretation supports an important EPA policy objective and legal obligation: Ensuring an opportunity for public input regarding all aspects of the issues presented in this rulemaking.

Section 801(a)(2) of the EnPA requires NAS to provide ''findings and recommendations on reasonable standards for protection of the public health and safety.'' This section of the EnPA calls for NAS to address three specific issues; however, Congress did not place any restrictions on other issues NAS could address. The report of the Congressional conferees underscored that ''the (NAS) would not be precluded from addressing additional questions or issues related to the appropriate standards for radiation protection at Yucca Mountain beyond those that are specified.'' (H.R. Rep. No. 102–1018, 102nd Cong., 2d Sess. 391 (1992)). Thus, given the potentially unlimited scope of NAS's inquiry under the statute, it could have provided findings and recommendations that would dictate literally all aspects of the public health and safety standards for Yucca Mountain, rendering our function a merely ministerial one.

Section 801(a)(1) of the EnPA plainly gives us the authority to issue, by rulemaking, public health and safety standards for Yucca Mountain. If at the same time that Congress gave NAS the authority to provide findings and recommendations on any issues related to the Yucca Mountain public health and safety standards, Congress also intended that NAS's findings and recommendations would bind us, then Congress effectively would have delegated to NAS a standard-setting authority that overrides our rulemaking authority. Carried to its logical conclusion, under this view of the statute, NAS would have authority to establish the public health and safety standards without a public rulemaking process. Congress' direction to EPA to set standards ''by rule'' would be unnecessary or relatively meaningless. It is both reasonable and appropriate to resolve this tension in the statute by interpreting NAS's findings and recommendations as non-binding, but highly influential, expert guidance to inform our rulemaking.

Thus, we do not believe the statute forces our rulemaking to adopt mechanically NAS's recommendations as standards. If it did, the statutory provisions would allow us to consider only those issues that NAS did not address. Further, the provisions calling for us to use standard rulemaking procedures in issuing the standards would be unnecessary to reach results that NAS already established. We consider the NAS Report's explicit references to decisions that should be made during the rulemaking process to be support for our position.

The EnPA conference report also reveals that Congress did not intend to limit our rulemaking discretion. The conference report clarifies that Congress intended NAS to provide ''expert scientific guidance'' on the issues involved in our rulemaking and that Congress did not intend for NAS to establish the specific standards:

> The Conferees do not intend for the National Academy of Sciences, in making its recommendations, to establish specific standards for protection of the public but rather to provide expert scientific guidance on the issues involved in establishing those standards. Under the provisions of section 801, the authority and responsibility to establish the standards, pursuant to rulemaking, would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues. (H.R. Rep. No. 102–1018, p. 391)

Our interpretation of the EnPA as not limiting the issues for consideration in this rulemaking is consistent with the views we expressed to Congress during deliberations over the legislation. The Chair of the Senate Subcommittee on Nuclear Regulation requested our views regarding the bill reported by the conference committee. The Deputy Administrator of EPA indicated the NAS Report would provide helpful input. Moreover, the Deputy Administrator pointed to the language, cited above, stating the intent of the conferees not to limit our rulemaking discretion and assured Congress that any standards for radioactive materials that we ultimately issue would be the subject of public comment and involvement and would fully protect human health and the environment (138 Cong. Rec. 33,955 (1992)).

Our interpretation also is consistent with the role that both NAS and Congress understood NAS would fulfill. During the Congressional deliberations over the legislation, NAS informed Congress that while it would conduct the study, it would not assume a standard-setting role because such a role is properly the responsibility of government officials. (138 Cong. Rec. 33,953 (1992)) Our interpretation of the NAS Report also avoids implicating potentially significant constitutional issues. Construing the EnPA as delegating to NAS the responsibility to determine the health and safety standards at Yucca Mountain may violate the Appointments Clause of the Constitution (Art. II, sec. 2, cl. 2), which imposes restrictions against giving Federal governmental authority to persons not appointed in compliance with that Clause. In addition, the Constitution places restrictions arising under the separation of powers doctrine upon the delegation of governmental authority to persons not part of the Federal government. We are not concluding, at this time, that an alternative interpretation necessarily would run afoul of constitutional limits. We believe, however, that it is

reasonable both to assume that Congress intended to avoid these issues when it adopted section 801 of the EnPA and to interpret the EnPA accordingly.

In summary, we do not believe we must, in this rulemaking, adopt all of NAS's findings and recommendations. The statute does, however, give NAS a special role. As noted previously, NAS's findings and recommendations were instrumental in this rulemaking. Our proposal is consistent with those findings and recommendations. We included many of the findings and recommendations in this rule. We tended to give greatest weight to NAS's judgments about issues having a strong scientific component, the area in which NAS has its greatest expertise. In addition, we reached final determinations that are congruent with NAS's analysis whenever we could do so without departing from the Congressional delegation of authority to us to promulgate, by rule, public health and safety standards for protection of the public. We believe our mandate from Congress required the consideration of public comments and the exercise of our own expertise and discretion.

We requested public comments concerning: how we should view and weigh NAS's findings and recommendations in the context of the specific issues presented in this rulemaking; whether we have given proper consideration to NAS's findings and recommendations; and whether we should give them more or less weight, and what the resulting outcome should be.

We received many comments regarding our EnPA authority and our interpretation of the NAS Report. Several comments took issue with our reasons for not simply adopting each of the NAS recommendations verbatim and stated that we are bound to do so. One comment asserted that our reasoning ''exaggerates the impact of the NAS Report'' on our rulemaking authority. However, these comments generally recognized that we can depart from the NAS panel's recommendations if it specifically stated that policy considerations could play a role in the decision, or if the recommendation at issue otherwise was not definitive (e.g., there was disagreement among the panel members). In particular, some comments suggested that we cannot include any provision if NAS did not recommend it. We disagree with this position. In the preamble to the proposed rule, we clearly stated our intentions regarding our use of the NAS Report (see 64 FR 46980–46983). We gave the NAS Report special consideration as ''expert scientific guidance.'' However, as discussed above, we do not believe that Congress intended the NAS Report to bind us absolutely. We note that NAS, in its comments on our proposed rule, did not offer an opinion on this point. Also, NAS acknowledges in several places in its report that, for policy or other reasons, we may elect to take approaches that differ from its recommendations. These statements show NAS did not consider its recommendations to be binding directions to EPA. The NAS did, however, identify aspects of the proposal it believes are inconsistent with its recommendations. A copy of NAS's comments on the proposal is in the docket (Docket No. A–95–12, Item IV–D–31). See the Response to Comments document for additional discussion of comments regarding our incorporation of the NAS recommendations (Docket No. A–95–12, Item V–C–1).

The following sections describe our public health and safety standards for Yucca Mountain and the considerations that underlie these standards. The next section addresses the storage portion of the standards. All of the other sections pertain to the disposal portion of the standards.

A. What Is the Standard for Storage of the Waste? (Subpart A, §§ 197.1 Through 197.5)

Section 801(a)(1) of the EnPA calls for EPA's public health and safety standards to apply to radioactive materials ''stored or disposed of in the repository at the Yucca Mountain site.'' The repository is the excavated portion of the facility constructed underground within the Yucca Mountain site (to be differentiated from the disposal system, which is made up of the repository, the engineered barriers, and the natural barriers). The EnPA differentiates between ''stored'' and ''disposed'' waste, although it indicates that we must issue standards that apply to both storage and disposal. Congress was not clear regarding its intended use of the word ''stored'' in this context. Also, NAS did not address the issue of storage versus disposal (see § 197.2 for our definition of ''storage'' and § 197.12 for our definition of ''disposal''). The DOE currently conceives of the Yucca Mountain repository as a disposal facility, not a storage facility; however, this situation could change. Therefore, we decided to interpret the statutory language as directing us to develop standards that apply to waste that DOE either stores or disposes of in the Yucca Mountain repository. The storage standard, therefore, applies to waste inside the repository, prior to disposal.

We received several comments regarding our proposed definition of ''disposal'' in § 197.12, arguing that the potential benefits of backfilling are unknown at present. In response to these comments, we changed the definition in the final rule to exclude the requirement that DOE use backfilling in the Yucca Mountain repository. We believe that DOE should have the flexibility to design the repository so that it is as protective of public health and the environment as possible. Therefore, in order not to constrain DOE unnecessarily in its choice of repository designs, we changed the definition of ''disposal'' as the comments suggested. Thus, under the revised definition in our final rule, it is no longer necessary for DOE to use backfilling for waste disposal to occur.

Several comments also suggested that our proposed definitions of ''disposal'' and ''barrier'' run counter to established notions of deep geologic repositories because they allow DOE to rely upon both engineered and natural barriers, instead of natural barriers alone, to contain the radioactive material to be stored in Yucca Mountain. These comments suggested we amend these definitions, as appropriate, to delete references to engineered barriers. According to the comments, the Yucca Mountain repository must meet public health and safety standards with no assistance from manmade structures or barriers. The EnPA mandates that we establish site-specific standards for Yucca Mountain. Under this mandate, we believe it is appropriate, based on the conditions present at Yucca Mountain, to allow DOE the flexibility to develop a combined system, using engineered barriers and natural barriers, to contain radioactive material to be disposed of in Yucca Mountain. For additional discussion of this topic, please see Chapter 7 of the BID.

The DOE also will handle, and might store, radioactive material aboveground (that is, outside the repository). Our existing standards for management and storage, codified at subpart A of 40 CFR part 191, apply to such storage activities. Subpart A of 40 CFR part 191 requires that DOE manage and store SNF, HLW, and transuranic radioactive wastes at a site, such as Yucca Mountain, in a manner that provides a reasonable assurance that the annual dose equivalent to any member of the public in the general environment will not exceed 25 millirem (mrem) to the whole body. (Note that a demonstration of ''reasonable assurance'' is necessary to comply with the standard for storage,

while subpart B of both 40 CFR part 191 and today's 40 CFR part 197 specify a demonstration of ''reasonable expectation'' to comply with the disposal standards. ''Reasonable assurance'' is an appropriate measure to apply to storage, as the facility will be in operation, with active monitoring and personnel present, during this time. The level of certainty connected with this period of active operation is significantly higher than can be attached to the much longer regulatory time period applicable to disposal standards. See our discussion of ''reasonable expectation'' in section III.B.2.c., *What Level of Expectation Will Meet Our Standards?*) This standard is the one that DOE must meet for WIPP and the greater confinement disposal (GCD) facility. (The GCD facility is a group of 120-feet deep boreholes, located within NTS, which contain disposed transuranic wastes.)

We take this position regarding the applicability of subpart A of 40 CFR part 191 because section 801 of the EnPA specifically provides that the standards we issue shall be the only ''such standards'' that apply at Yucca Mountain. Thus, the EnPA is the exclusive authority for today's action regarding storage inside the repository. The WIPP LWA does not exclude Yucca Mountain from the management and storage provisions in subpart A of 40 CFR part 191. The 40 CFR part 197 standards supercede our generally applicable standards (40 CFR part 191) only to the extent that the EnPA requires site-specific standards for storage inside the repository at Yucca Mountain. Otherwise, the 40 CFR part 197 standards have no effect on our generic standards. As noted, we interpret the scope of section 801 to include both storage and disposal of waste in the repository. Thus, waste inside the repository is subject to the standards in today's action. Our generic standards (subpart A of 40 CFR part 191) will apply to waste stored at the Yucca Mountain site, but outside of the repository.

The storage standards in 40 CFR 191.03(a) are stated in terms of an older dose-calculation method and are set at an annual whole-body-dose limit of 25 mrem/yr. The storage standard for Yucca Mountain uses a modern dose-calculation method known as ''committed effective dose equivalent'' (CEDE). Even though today's final rule uses the modern method of dose calculation, we believe that the dose level maintains a similar risk level as in 40 CFR 191.03(a) at the time of its promulgation (see the discussion of the different dose-calculation methods in the *What Is the Level of Protection For Individuals?* section later in this document). The difference between these dose calculation procedures presents a problem in combining the doses for regulatory purposes. However, we have begun to develop a rulemaking to amend both 40 CFR parts 190 and 191. That rulemaking would update these limits to the CEDE methodology. However, because we have not yet finalized that change, we need to address the calculation of doses under the two methods in another fashion (see the last paragraph in this section for more detail).

As discussed in the preamble to the proposed rule (64 FR 46983), we considered the differences among the conditions covered by the storage standards in 40 CFR 191.03(a) and the conditions that could affect storage in the Yucca Mountain repository. The most significant difference is that the storage in Yucca Mountain would be underground, whereas most storage covered under 40 CFR part 191 is aboveground. Otherwise, the technical situations we anticipate under both the existing generic standards and the Yucca Mountain standards are essentially the same. Also, our final rule extends a similar level of protection as in the 1985 version of subpart A of 40 CFR part 191. In other words, under the 40 CFR part 197 storage standard, exposures of members of the public from waste storage inside the repository would be combined with exposures occurring as a result of storage outside the repository but within the Yucca Mountain site (as defined in 40 CFR 197.2). The total dose could be no greater than 150 microsieverts (μSv) (15 mrem) CEDE per year (CEDE/yr).

We requested comments regarding our interpretation of section 801 and our approach to coordinating the doses originating from inside and outside the Yucca Mountain repository. We received two comments regarding this issue. One comment urged us to establish a single, new, and separate standard for the Yucca Mountain site that would encompass the pre-closure operations both aboveground and in the repository. The comment further stated that the suggested approach would avoid using two different rules for the same site. This suggested approach also would avoid the need to use the older dose methodology currently in 40 CFR part 191. Another comment stated that the application of subpart A of 40 CFR part 191 would not be inappropriate.

We considered establishing a new standard to cover the entirety of the management and storage operations at Yucca Mountain, as was suggested by one comment. This had the attractive feature of applying one standard, instead of two, to the management and storage activities in and around Yucca Mountain.

However, after considering the comments, the wording in section 801(a)(1) of the EnPA, and the impending rulemaking to amend subpart A of 40 CFR part 191, we have decided to cover the surface management and storage activities within the Yucca Mountain site under 40 CFR part 191 and management and storage activities in the Yucca Mountain repository under 40 CFR part 197. However, the combined doses incurred by any individual in the general environment from these activities must not exceed 150 μSv (15 mrem) CEDE/yr. This will require the conversion of doses from the surface activities from the older dose system (under which the 40 CFR part 191 standards were developed) into the newer system to be able to combine the doses from the two areas of operation. There are established methods to do this, e.g., in the appendix to 40 CFR part 191, but we are leaving the methodology in this case to NRC's implementation process. We are continuing to develop a rulemaking to update the dose system used in subpart A of 40 CFR part 191. When that amendment is finished, the conversion for the activities subject to subpart A of 40 CFR part 191 will be unnecessary.

B. What Are the Standards for Disposal? (§§ 197.11 through 197.36)

Subpart B of this final rule consists of three separate standards (or sets of standards) that apply after final disposal, which are discussed in more detail in the appropriate sections of this document. The disposal standards are:

- An individual-protection standard;
- Ground-water protection standards; and
- A human-intrusion standard.

1. What Is the Standard for Protection of Individuals? (§§ 197.20 and 197.25)

The first standard is an individual-protection standard. It specifies the maximum dose that a reasonably maximally exposed individual (RMEI) may receive from releases from the Yucca Mountain disposal system.

a. Is the Limit on Dose or Risk? Section 801(a)(1) of the EnPA directed that our standards for Yucca Mountain ''shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository * * *.'' The EnPA also requires us to issue our standards

''based upon and consistent with'' NAS's findings and recommendations.

The NAS recommended that we adopt a risk-based standard to protect individuals, rather than a dose-based standard as Congress prescribed. The NAS offered two reasons for its recommendation. First, a risk-based standard is advantageous relative to a dose-based standard because it ''would not have to be revised in subsequent rulemakings if advances in scientific knowledge reveal that the dose-response relationship is different from that envisaged today'' (NAS Report p. 64). Second, NAS believes a risk-based standard more readily enables the public to comprehend and compare the standard with human-health risks from other sources.

We reviewed and evaluated the merits of a risk-based standard as recommended by NAS (NAS Report, pp. 41–ff.). However, we chose to adopt a dose-based standard for the following reasons. First, EnPA section 801(a)(1) specifically directs us to promulgate a standard prescribing the ''maximum annual dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository.'' Also, the Conference Committee specifically stated that EPA's standards ''shall prescribe the maximum annual dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. (H. R. Rep. 102–1018, 102nd Cong., 2d Sess. 390 (1992)). In a situation such as this, where both the statutory language and the legislative history are clear, we are obliged to implement the clearly stated plain language of the statute and to carry out the unambiguous intent of the Congress.

Second, both national and international radiation protection guidelines developed by bodies of non-governmental radiation experts, such as ICRP and NCRP, generally have recommended that radiation standards be established in terms of dose. Also, national and international radiation standards, including the individual-protection requirements in 40 CFR part 191, are established almost solely in terms of dose or concentration, not risk. Therefore, a risk standard will not allow a convenient comparison with the numerous existing dose guidelines and standards.

However, we did establish the dose limit using the risk of developing a fatal cancer. The level of risk, about 8.5 fatal cancers per million members of the population per year (see the preamble to the proposed rule at 64 FR 46984), is a level the Agency has judged to be acceptable taking into account many factors, including existing radiation standards (such as subpart B of 40 CFR part 191), Congressional action (the WIPP LWA), and the comments received on the proposed standards. On page 46985 of the preamble to the proposed rule, we cited a risk of approximately seven in a million per year. This value was based upon the NAS risk value of 5×10^{-2} per Sv (5×10^{-4} per rem, NAS Report p. 47). However, for consistency, we should have used the value which was first discussed on page 46979 of the preamble to the proposed rule, 5.75×10^{-2} per Sv (5.75×10^{-2} per rem), and which is from Federal Guidance Report 13 (Docket A–95–12, Item V–A–20). This higher value associates an annual risk of about 8.5 in a million with 150 μSv (15 mrem). Because this underlying risk level is a matter of public policy, it is possible that the level could change if future decisionmakers make a different judgment as to the level of risk acceptable to the general public. Likewise, as NAS noted, it could become necessary to change the dose limit as a result of future scientific findings about the cancer-inducing aspects of radiation (i.e., in correlating dose with risk). Therefore, no matter which form of standard is used, it is subject to change in the future, though the reasons for change may not be identical. However, either way, risk is the underlying basis of the standards. It is for the other reasons cited in this section that we chose to use dose. In addition, dose and risk are closely related. It is possible to convert one to the other by using the appropriate conversion factor. We have discussed the correlations that we used in converting risk to dose, both in this preamble and in Chapter 6 of the BID.

Finally, we did not receive any comments in favor of a risk standard that provided either a compelling technical or policy rationale for promulgating such a standard (see the Response to Comments document).

Therefore, we establish a standard stated as a dose rather than a risk.

We requested comments as to whether the standard should be expressed as risk or dose. Not unexpectedly, the comments were divided between the alternatives. Most of the comments supported the use of dose.

One comment stated that the calculation of a dose limit through a probabilistic performance assessment is a reasonable way to assure that the repository will meet the overall health risk objective. It is NRC's responsibility to determine how DOE must demonstrate compliance with our standards; however, we envision the use of a probabilistic assessment for the compliance demonstration. Another comment stated that a dose limit is a reasonable way for us to incorporate cancer risk into the regulation. As discussed to some extent in section III.B.1.b (*What Factors Can Lead to Radiation Exposure?*), and in more detail in the preamble to the proposed standards (beginning on 64 FR 46984), the risk of fatal cancer, an annual risk of about 8.5 in a million for an exposure of 150 μSv, is the basis of the level of protection that we have established.

A few comments supported stating the standard in terms of risk rather than dose. For example, NAS was concerned that a dose standard would preclude the public from being able to compare risks with other hazardous materials. According to NAS, the use of a dose standard also makes it difficult for the public to compare the risks inherent in the ground-water protection standards with the risks inherent in the individual-protection standard. The NAS also stated that its recommendation to use a risk standard did not preclude us from using a dose standard, as long as the underlying risk basis was clearly understood. We believe that we have been sufficiently clear in describing the risk basis of the standards within this preamble and the Response to Comments document.

b. What Factors Can Lead to Radiation Exposure? Protection of the public from exposure to radioactive pollutants requires knowledge and understanding of three factors: the sources of the radiation, the pathways leading to exposure, and the recipients of the radiation dose. The standards must consider all three factors. This section discusses the sources of radiation and the pathways of exposure. The following two sections discuss the recipients of the dose. Dose assessments are conducted through a type of calculational analysis called ''performance assessment''. The performance assessment is the quantitative analysis of the projected behavior of the disposal system, which considers release scenarios for the repository and carries the analysis through various pathways in the environment that culminate in exposures to members of the public.

Sources. The waste disposed of in Yucca Mountain will contain many radionuclides, including unconsumed uranium, fission products (such as cesium-137 and strontium-90), and transuranic elements (such as plutonium and americium).

The inventory of radionuclides over time will depend upon the type and amount of radionuclides originally disposed of in the repository, the half-lives of the radionuclides, and the amount of any radionuclides formed from the decay of parent radionuclides (see Chapter 5 of the BID). In the time frame of tens to hundreds of thousands of years, the short-lived radionuclides initially present in SNF and HLW will decay. Therefore, the waste eventually will have radiologic hazards similar to a large uranium ore body; such ore bodies naturally occur in a variety of settings throughout the country. A typical uranium ore body contains relatively low concentrations of very long-lived radionuclides similar to those present in the radioactive wastes to be disposed of in Yucca Mountain (see the preamble to the final rule establishing 40 CFR part 191 (50 FR 38083, September 19, 1985)).

Barriers to Radionuclide Movement. To delay and limit the movement of radionuclides into the biosphere, DOE plans to use multiple barriers. These barriers will be both engineered (human-made) and natural based on the design of, and conditions in and around, the disposal system.

Both the natural and engineered barriers must delay and limit releases of radionuclides from the repository. For example, an engineered barrier could be the waste form. The DOE plans to convert liquid HLW, derived from reprocessing SNF, into a solid by entraining the radionuclides into a matrix of borosilicate glass. The molten glass then would be poured into and solidified in a second engineered barrier, a metal container (see Chapter 7 of the BID). In addition, it is possible to have other engineered barriers in the repository to serve as part of the disposal system (see Chapter 7 of the BID).

Natural barriers at Yucca Mountain also could slow the movement of radionuclides into the accessible environment. For instance, DOE plans to construct the repository in a layer of tuff located above the water table. The relative dryness of the tuff around the repository would limit the amount of water coming into contact with the waste, and would retard the future movement of radionuclides from the waste into the underlying aquifer. Any radioactive material that dissolved in infiltrating water, originating as surface precipitation, still would have to move to the saturated zone. In the saturated zone, which lies below the unsaturated zone, water completely fills the pores and fractures in the rock. Minerals, such as zeolites, in the tuff beneath the repository could act as molecular filters and ion-exchange agents for some of the released radionuclides, thereby slowing their movement. These minerals also could limit the amount of water that contacts the waste and could help retard the movement of radionuclides from the waste to the water table. This mechanism would be most effective if flow was predominantly through the matrix (the pores in the rock) (see Chapter 7 of the BID).

Pathways. Once radionuclides have left the waste packages, water or air could carry them to the accessible environment. Ground water will carry most of the radionuclides released from the waste packages away from the repository. However, air moving through the mountain will carry away those radionuclides, such as carbon-14 (^{14}C) in the form of carbon dioxide, that escape from the waste packages in a gaseous form. For more detailed discussions of the ground water and air pathways, see the preamble to the proposed rule (64 FR 46986) and Chapters 8 and 9 of the BID.

Movement via water. Radionuclides will not move instantaneously into the water table. The length of time it will take for radionuclides to reach the water table depends partly on how much the water moves via fractures or through the matrix of the rock. Once radionuclides reach the saturated zone, they would move away from the disposal system in the direction of ground water flow.

There are currently no perennial rivers or lakes adjacent to Yucca Mountain that could transport contaminants. Therefore, based on current knowledge and conditions, ground water and its usage will be the main pathways leading to exposure of humans. Current knowledge suggests that the two major ways that people would use the contaminated ground water are: (1) Drinking and domestic uses; and (2) agricultural uses (see Chapters 8 and 9 of the BID). In other words, radionuclides that reach the public could deliver a dose if an individual: (1) Drinks contaminated ground water or uses it directly for other household uses; (2) drinks other liquids containing contaminated water; (3) eats food products processed using contaminated water; (4) eats vegetables or meat raised using contaminated water; or (5) otherwise is exposed as a result of immersion in contaminated water or air or inhalation of wind-driven particulates left following the evaporation of the water.

Movement via air. Releases of gaseous ^{14}C from the wastes can move through the tuff overlying the repository and exit into the atmosphere following release from the waste package. Once the radioactive gas enters the atmosphere, it would disperse across the globe. This global dispersion would result in significant dilution of the ^{14}C. The major pathway for human exposure to ^{14}C is the uptake of radioactive carbon dioxide by plants that humans subsequently eat (see Chapter 9 of the BID).

c. What Is the Level of Protection for Individuals? Our individual-protection standard sets a limit of 150 μSv (15 mrem) CEDE/yr. This limit corresponds approximately to an annual risk of fatal cancer of about 8.5 chances in 1,000,000 (8.5×10^{-6}). It is within NAS's recommended starting range of 1 in 100,000 to 1 in 1,000,000 annual risk of fatal cancer (see the NAS Report p. 5, Docket No. A–95–12, Item II–A–1). The NAS's recommended risk range corresponds to approximately 20 to 200 μSv (2 to 20 mrem) CEDE/yr.

We considered NAS's findings and recommendations in our determination of the CEDE level that would be adequately protective of human health. We also reviewed established EPA standards and guidance, other Federal agencies' standards for both radiation and non-radiation-related actions, and other countries' regulations. In addition, we evaluated guidance on dose limits provided by national and international non-governmental advisory groups of radiation experts.

Section 801(a)(1) of the EnPA calls for our Yucca Mountain standards to ''prescribe the maximum annual effective dose equivalent to individual members of the public from releases of radioactive materials.'' Development of the individual-protection standard required us to evaluate and specify several factors, which include the level of protection, whom the standards should protect, and how long the standards should provide protection. Determining the appropriate dose level is ultimately a question of both science and public policy. As NAS stated: ''The level of protection established by a standard is a statement of the level of the risk that is acceptable to society. Whether posed as 'How safe is safe enough?' or as 'What is an acceptable level?', the question is not solvable by science'' (NAS Report p. 49).

We requested comment regarding the reasonableness of our proposed 15 mrem CEDE/yr individual-protection standard. We received many comments, some of which supported the proposal, while others stated that we should make the level higher or lower. This final rule establishes a limit of 15 mrem CEDE/yr for the reasons discussed in the preamble to the proposed rule (see 64

FR 46984 and following). Principally, the reasons were: This level is within the NAS-recommended range (which NAS based upon its review of other Federal actions, guidelines developed by national and international advisory bodies, and the regulations in other countries); the fact that many existing standards are at this level, particularly the EPA standards (40 CFR part 191) applicable to WIPP (in the case of some older standards, the equivalence is based upon more recent understanding of the damage that radiation can cause); and, after consideration of the comments and the site-specific conditions, we believe that this level is a sufficiently stringent level of protection for this situation.

Many comments argued that the proposed level was too low. For example, a few comments preferred a dose level of 25 mrem/yr to maintain consistency with current NRC regulations. Another comment advocated a dose level of 70 mrem/yr, given the long time frames, the national importance of the repository, and other factors. Other comments thought that the standard should be lower. Several of these comments supported a limit of 5 mrem/yr. Other comments supported a zero dose limit.

Some comments stated that, though they preferred a zero-release standard, they realized that our level was implementable. We agree that the disposal program should ideally have a goal of no releases. However, we believe it is incumbent upon us to set a stringent, yet reasonable, standard. We are establishing a standard that provides comparable protections to those of other activities related to radioactive and non-radioactive wastes. Given the current state of technology, it may not be possible to provide absolute certainty that there will be no releases over a 10,000 year or longer time frame. Therefore, we have attempted to establish a standard that is protective that can be implemented to show compliance.

Our final consideration in selecting a level of protection was guidance from national and international non-governmental bodies, such as ICRP and NCRP, which have recommended a total annual dose limit for an individual of 1 mSv (100 mrem) effective dose from exposure to all radiation sources except background and medical procedures. The dose level of 1 mSv (100 mrem) corresponds to an annual risk of fatal cancer of about 6 in 100,000 (6×10^{-5}). In its Publication No. 46, ''Radiation Protection Principles for the Disposal of Solid Radioactive Waste,'' the ICRP recommends apportionment of the total allowable radiation dose among specific practices. (Docket No. A–95–12, Item V–A–12). The apportionment of the total dose limit among different sources of radiation is used to ensure that the total of all included exposures is less than 1 mSv (100 mrem) CED/yr. Thus, ICRP recommends that national authorities apportion or allocate a fraction of the 1 mSv (100 mrem)-CED/yr limit to establish an exposure limit for SNF and HLW disposal facilities. Most other countries have endorsed the apportionment principle.

There are multiple sources of potential radionuclide contamination on and near NTS, one of which is the Yucca Mountain site. Portions of NTS have been subjected to both underground and aboveground nuclear weapon detonations. A substantial quantity of radionuclides was created by these tests. An estimated inventory of 300 million curies remains underground (see Appendix II of the BID; Chapter 8 of DOE's Draft Environmental Impact Statement for Yucca Mountain (DOE/EIS/0250D), Docket No. A–95–12, Item V–A–4; and Nevada Risk Assessment/Management Program (NRAMP), Docket No. A–95–12, Item V–A–17). Elsewhere on the NTS, DOE is burying LLW in near-surface trenches and TRU radioactive waste has been disposed of in the Greater Confinement Disposal facility. Finally, there is a commercial LLW disposal system located west of Yucca Mountain near Beatty, Nevada. Each of these facilities could have releases of radioactivity into the ground water (see Chapter 8 of DOE's Draft Environmental Impact Statement for Yucca Mountain (DOE/EIS/0250D), Docket No. A–95–12, Item V–A–4; and Nevada Risk Assessment/Management Program (NRAMP), Docket No. A–95–12, Item V–A–17). The regional flow of ground water is believed to be generally from the locations where some of these practices have occurred toward the area where radionuclides released from the Yucca Mountain disposal system are presumed to go (see Nevada Risk Assessment/Management Program (NRAMP), Docket No. A–95–12, Item V–A–17). The total of the releases from these sources should be constrained to the total dose limit of 1 mSv (100 mrem) CED/yr, as recommended by ICRP, because the releases from these sources could affect the same group of people. The potential doses from these other sources might contribute to individual doses for the reasonably maximally exposed individual (RMEI) over different time frames. According to Chapter 8 of the DEIS for Yucca Mountain (DOE/EIS/0250D, Docket No. A–95–12, Item V–A–4), potential releases from LLW management and disposal operations may contribute very small individual doses. A quantitative attempt to allocate potential dose from these other sources would be highly speculative; however, it would be reasonable to maintain the allocation approach reflected in the established dose limits in both the United States and internationally.

In summary, based on our review of the guidance, regulations, and standards cited above, and the NAS Report, we are establishing a standard of 150 μSv (15 mrem) CEDE/yr for the Yucca Mountain disposal system (40 CFR 197.13). This level is 15% of the ICRP-recommended total dose limit. It falls within the range of standards used in other countries and the range recommended by NAS, and is also consistent with the individual-protection requirement in 40 CFR part 191. This level will be the CEDE level with which the dose over the compliance period must be compared. The compliance period is the time interval over which projections of the performance of the disposal system must be made for the purpose of assessing the future performance of the disposal system (see the *How Far Into the Future is it Reasonable to Project Disposal System Performance?* section later in this document for more detail).

d. Who Represents the Exposed Population? To determine whether the Yucca Mountain disposal system complies with our standard, DOE must calculate the dose received by some individual or group of individuals exposed to releases from the repository and compare the calculated dose with the limit established in the standard. The standard specifies, therefore, the representative individual for whom DOE must make the dose calculation. We expect that NRC will define the details, beyond those which we have specified, necessary for the dose calculation.

Our approach for the protection of individuals. We examined two possible approaches: the critical group (CG) approach recommended by NAS (NAS Report, pp. 49–54, Appendix C, and Appendix D) and the reasonably maximally exposed individual (RMEI) approach. The goal in representing the exposed population is to estimate the level of exposure that is protective of the vast majority of individuals in that population, but still within a reasonable range of potential exposures. We chose the RMEI approach because we believe it more appropriately protects individuals and is less speculative to implement than the CG approach given the unique conditions present at Yucca

Mountain. Also, it remains a conservative but reasonable approach that accomplishes the same goal as the CG approach.

The NAS definition of critical group. The NAS Report recommended that we use the risk to a CG as the basis for the individual-protection standard. The CG would be the group of people that, based upon cautious, but reasonable, assumptions, has the highest risk of incurring health effects due to releases from the disposal system. In its report, NAS discussed two specific examples of critical groups. The NAS considered the probabilistic critical group based upon a present-day farming community to be more appropriate and less reliant on speculative assumptions than the other critical group it discussed, which was based upon subsistence farming. However, following due consideration, we decided that the subsistence-farmer approach discussed by NAS would be inappropriate, since we could not find nor did any other party demonstrate that there is the subsistence-farmer lifestyle at, or downgradient from, Yucca Mountain. For detailed discussions of NAS's CG approaches, please see the preamble to the proposed rule, 64 FR 46986–46988, and the NAS Report at pp. 49–54 and 145–159.

The Reasonably Maximally Exposed Individual (RMEI). As just mentioned, NAS recommended that the standard incorporate a CG approach for estimating individual exposures from repository release projections (NAS Report p. 52). As NAS pointed out, the CG approach has been examined internationally and recommendations for its application have been proposed (NAS Report, Chapter 2). In addition to recommending the use of the CG approach, NAS posited the use of a ''probabilistic'' CG, which is a CG evaluated using probabilistic techniques for assessing exposures, not only for the parameters that affect repository releases but also for the probability that an individual will use contaminated ground water away from the site. As NAS points out, ''the components of a probabilistic computational approach have considerable precedent in repository performance, we are not aware that they have previously been combined to analyze risks to critical groups'' (NAS Report, Appendix C). In that sense, NAS ''probabilistic'' CG is a departure from the more widely understood application of the CG concept. The approach we have chosen embodies the intent of the internationally accepted concept to protect those individuals most at risk from the proposed repository but specifies one or a few site-specific parameters at their maximum values. We chose to use an approach involving limiting exposure to a defined ''reasonably maximally exposed individual'', the RMEI. There are similarities between the probabilistic CG and RMEI approaches, and also some significant differences arising from the Yucca Mountain site, that caused us to select the RMEI alternative (see also ''Characterization and Comparison of Alternative Dose Receptors for Individual Radiation Protection for a Repository at Yucca Mountain'', Docket No. A–95–12, Item V–B–3).

In both approaches, the attempt is made to consider a range of conditions for the exposed individuals that affect exposures, including geographic population distributions, lifestyles, and food consumption patterns for populations at risk. The characteristics of the RMEI are defined from consideration of current population distribution and ground water usage, and average food consumption patterns for the population in question. Such characterizations typically are done by surveying existing populations, and a ''composite'' RMEI is defined with one or more parameters that significantly affect exposure estimates set at high values so that the individual is ''reasonably maximally exposed.'' The CG approach typically is used under the assumption of a larger population within which a smaller group (the critical group) incurs a more homogeneous risk from exposures, in contrast to the larger population group where exposures will vary widely. Characteristics of the CG also are derived from information or assumptions about the potentially exposed population; however, a small group within the larger population, rather than a composite individual, is defined. Both the CG and the RMEI are then located above the path of the contamination plume and the exposure variations are calculated as a function of the parameters that control radionuclide transport from the contamination source (here, the repository). The ''probabilistic'' CG defined in the NAS Report (Appendix C) adds an additional layer of analytical detail by introducing the idea that the path of the radionuclide contamination is subject to considerable uncertainty and the exposure of the CG is further qualified by the probability that the contamination plume is tapped by the CG at any point in time. This approach assumes the location of the probabilistic CG is fixed independently of the projected path(s) for radionuclide migration from the repository, and the potential exposures then are a direct function of the probability that the contamination plume reaches the location of the group. The more common approach to locating the CG, for the purpose of estimating exposures, is to determine where the group can receive exposures from the contamination plume and then locating the CG at that place, regardless of whether a population is currently at that location or not. Both of these approaches appear to give essentially the same maximum dose levels to at least some individuals, because at some point in time the CG would tap into the contamination plume and receive the exposures. However, if assumed to be widely distributed geographically, many members of the CG could receive considerably smaller doses, or no dose, resulting in an average dose which does not reflect the intent of the CG concept. Overall, as explained further, below, the difference in the distribution of doses using the CG approach depends upon the implementation details describing how the total spectrum of dose assessments would be calculated.

We relied upon many factors in making the decision to use the RMEI concept. First, this approach is consistent with widespread practice, current and historical, of estimating dose and risk incurred by individuals even when it is impossible to specify or calculate accurately the exposure habits of future members of the population, as in this case where it is necessary to project doses for very long periods. Second, we believe that the RMEI approach is sufficiently conservative and that it is fully protective of the general population (including women and children, the very young, the elderly, and the infirm). The risk factor upon which the dose level was established is very small, 5.75 chances in 10,000,000 per mrem for fatal cancer. The lifetime risk then is this factor multiplied by the total dose received in each year of the individual's lifetime. We believe that the risk prior to birth is very similar to this risk level; however, relative to the rest of that individual's lifetime, the difference is small. Third, we believe that it provides protection similar to the CG recommended by NAS. The RMEI model uses a series of assumptions about the lifestyle of a hypothetical individual. This belief was supported by NAS in its comments on the proposed 40 CFR part 197. The NAS agreed that EPA's RMEI approach is ''broadly consistent with the TYMS report's recommendation'' (Docket No. A–95–12, IV–D–31). Fourth, it is possible to build the desired degree of

conservatism into the model through choices of assumed values of RME parameters. However, these values would be within certain limits because we require the use of Yucca Mountain-specific characteristics in choosing those parameters and their values. In subpart B of 40 CFR part 197, we establish a framework of assumptions for NRC to incorporate into its implementing regulations. Fifth, we believe that the RMEI approach is more straightforward in its application than the CG approach (particularly the probabilistic CG approach). The RMEI can reasonably be assumed to incur doses from the plume of contamination. By locating the RMEI for dose assessment purposes above the plume's direct path, high-end dose estimates will result. A probabilistic CG implies some, or even many, locations of the members across a broader geographic area than the plume covers. This dispersal inescapably involves additional decisions for the method to be used for combining dose estimates for the group members and comparison against regulatory limits and could average some, or many, doses with a zero magnitude. In addition, specifying certain assumptions regarding consumption habits, e.g., requiring the assumption that the RMEI drinks a high-end estimate of 2 liters/day of ground water and that dietary intake is determined using surveys of today's population in the Town of Amargosa Valley, assure that the RMEI is ''reasonably maximally'' exposed (§ 197.21). We believe this approach is consistent with the NAS recommendation of ''cautious, but reasonable'' assumptions for repository dose assessments (NAS Report p. 6). With these assumptions about the location to be used for dose assessments and food and water consumption, we believe that the RMEI approach would result in dose estimates comparable to a small CG. For a CG, food and water consumption patterns would also be determined from surveys of the local population and, possibly, by some assumptions to push the dose assessments toward higher-end dose estimates. The important difference between the composite RMEI and probabilistic CG approaches is in the assumed distribution of the group members relative to the projected path of radionuclide contamination from the repository. And, finally, sixth, we previously have used the RMEI approach in our regulations (see FR 22888, 22922, May 29, 1992). We have not used the CG approach. For example, the WIPP certification criteria (40 CFR part 194) use an approach involving estimating doses to individuals rather than to a defined CG.

We believe the RMEI approach is more direct and easily understood than the probabilistic CG approach because the uncertainties of estimating doses for a randomly located population is avoided, but the approach is still ''cautious, but reasonable.'' We believe that the ''probabilistic'' CG described by NAS would give essentially the same high-end dose results for situations where the group is small, located in a relatively small area, and is above the path of the contamination plume. However, this was not the concept recommended by NAS. Therefore, we believe our RMEI approach captures the essential ''cautious, but reasonable'' approach recommended by NAS while minimizing speculative aspects of the probabilistic CG approach. We do not mean to imply that a CG approach would never be appropriate, or that we would never use a CG approach in a regulatory action or other decision. However, in this particular site-specific situation, had we used a CG, we would have considered it necessary to define it in detail (in terms of size and location) using cautious, but reasonable, assumptions, but as discussed elsewhere in this document, we believe that the RMEI approach is preferable for Yucca Mountain.

Our RMEI is a theoretical individual representative of a future population group or community termed ''rural-residential'' (see Chapter 8 of the BID for a description of this concept). The DOE will calculate the CEDE the RMEI receives using cautious, but reasonable, exposure parameters and parameter-value ranges as described below. The NRC would use the projected CEDE in determining whether DOE complies with the standard. The DOE will perform the dose calculation to estimate exposure resulting from releases from the waste into the accessible environment based upon the assumption of present-day conditions in the vicinity of Yucca Mountain. Under our standard, the RMEI will have food and water intake rates, diet, and physiology similar to those of individuals in communities currently living in the downgradient direction of flow of the ground water passing under Yucca Mountain.

We did, however, receive comments from tribal representatives expressing concern regarding an alternative approach. The Paiute and Shoshone Tribes stated that they use the Yucca Mountain area for traditional and customary purposes, including traditional gathering, and it is their belief that these uses should be incorporated into the formula upon which the final standards are based. We considered the Tribes' comments, but, for several reasons explained below, we conclude, after considering their description of tribal uses of the area, that the rural-residential RMEI is fully protective of tribal resources.

First, the tribal use of natural springs is apparently occurring in the vicinity of Ash Meadows, since we are not aware of another area downgradient from Yucca Mountain where water discharges in natural springs, with the possible exception of springs in the more distant Death Valley. These natural springs are likely fed by the ''carbonate'' aquifer, which is beneath the ''alluvial'' aquifer being used Town of Amargosa Valley (including at Lathrop Wells) now, and which we assume will be used in the future. The available data indicate that although it is likely that the alluvial aquifer would be contaminated by releases from the potential Yucca Mountain repository, flow is generally upward from the carbonate aquifer into the overlying aquifers, suggesting that there is no potential for radionuclides to move downward into the carbonate system. If downward movement were to occur, however, radionuclide concentrations would be significantly diluted in the larger carbonate flow system. As a result, springs fed from the carbonate aquifer would have lower contamination levels than would wells at the Lathrop Wells location, which tap aquifers closer to, and more directly affected by, the source of potential contamination. A more extensive discussion of the aquifer systems and geology in the Yucca Mountain area may be found in sections II.D and III.B.4.e of this preamble, and Chapters 7 and 8 of the BID.

Second, the tribal use of wildlife and non-irrigated vegetation should not contribute significantly to total individual dose estimates. Gaseous releases from the repository are not a significant contributor to individual doses (NAS report, pg. 59) through inhalation or rainfall, and should contribute less to contamination of wildlife and non-irrigated vegetation than the use of contaminated well water for raising crops and animals for food consumption. We believe our requirement that DOE and NRC base food ingestion patterns on current patterns for the agricultural area directly down gradient from the repository is a more conservative requirement.

Third, the dose incurred by the RMEI is calculated at a location closer to the disposal system than the Ash Meadows area (approximately 18 km versus 30

km). The RMEI would receive a higher dose from ground water consumption than would an individual at Ash Meadows, even if the carbonate aquifer could be contaminated by repository releases, for the reasons mentioned above.

Fourth, the RMEI is assumed to be a full-time resident continually exposed to radiation coming from the disposal system. It appears that the tribal uses are intermittent and involve resources which are less likely to be contaminated, resulting in lower doses than those to the RMEI.

Presently, we expect the ground water pathway to be the most significant pathway for exposure from radionuclides transported from the repository (NAS Report p. 48; Chapter 8 of the BID). Our initial evaluation of potential exposure pathways from the disposal system to the RMEI suggests that the dominant fraction of the dose incurred by the RMEI likely will be from ingestion of food irrigated with contaminated water (see Chapter 8 of the BID). It is possible, however, that DOE and NRC will determine that another exposure pathway is more significant. Consequently, DOE and NRC must consider and evaluate all potentially significant exposure pathways in the dose assessments. As a result of the dose assessments using different combinations of parameter values, there will be a distribution of potential doses incurred by the RMEI. The NRC will use the mean value of that distribution of RMEI doses to determine DOE's compliance with the individual-protection standard. We requested comments regarding both the use of the RMEI approach and the use of the higher of the mean or median value to determine compliance with the individual-protection standard. We also requested comments regarding the desirability of adopting the CG approach rather than the RMEI approach. We further requested that comments supporting the CG approach address the level of detail our rule should include for the parameters used to describe the CG. Comments on various aspects of the RMEI approach appear later in this section. Comments on the mean/median compliance level are in the answer to Question #13 in section IV.

We received comments supporting both the RMEI and the CG approaches. For example, one commenter felt that NRC's proposed licensing regulation for Yucca Mountain (64 FR 8640, February 22, 1999) was more consistent with the NAS recommendation because it included a farming community CG (see NRC's proposed 10 CFR 63.115). This commenter also stated that the proposed 10 CFR part 63 contains the appropriate level of detail to define the CG. Other commenters recommended the use of a subsistence farmer CG approach on the grounds that such an approach is more protective than the rural-residential RMEI. These groups stated that the RMEI is ''purely speculative.''

As noted earlier, NAS recommended using the CG concept. This approach can account for differences in age, size, metabolism, habits, and environment to avoid heavily skewing the results based upon personal traits that make certain people more or less vulnerable to radiation releases than the average within the group. In comparison, under the RMEI approach, the dose that the RMEI incurs is calculated using some maximum values and some average values for the factors that are important to estimating dose. Physical differences such as age, size, and metabolism are also incorporated into the risk value for development of cancer, in effect making the RMEI a ''composite'' individual. This procedure also projects doses that are within a reasonably expected range rather than projecting the most extreme cases.

Regarding the comments stating that the RMEI is ''purely speculative,'' we agree that the RMEI approach is speculative; however, it is less speculative than the scenario suggested in the comments supporting the use of a subsistence farmer. We are not aware of any subsistence farmers (as defined by the comments) in Amargosa Valley. If we used the comments' approach we would, therefore, be engaging in even more speculation than we are by using a current lifestyle. Any future projection involves speculation. Our basis for using the RMEI is that we are following NAS's recommendation to use current technology and living patterns because speculation upon future society and lifestyle variations can be endless and not scientifically supportable (NAS Report p. 122). As stated earlier, the danger in defining a probabilistic CG is that it may be skewed by including randomly located people who will have minimal exposures, resulting in less conservative estimates for the group. Given the conditions at Yucca Mountain, we considered this to be a very real possibility. We consider using a composite individual to be a much simpler means of accomplishing the same purpose while maintaining more control over who is represented in the exposure assessments. Had we opted to use a probabilistic CG, we would have identified certain characteristics of the group in order for it to meet our intent, as we have done with the RMEI.

Overall, we believe that the RMEI approach both meets the intent of NAS and the EnPA and continues a regulatory methodology that we previously have used successfully. Further, though it recommended that we use a CG approach, NAS seemed to recognize that a non-CG approach could accomplish the same purpose. In its report, NAS stated ''[i]t is essential that the scenario that is ultimately selected *be consistent* with the critical-group concept that we have advanced'' (NAS Report p. 10, emphasis added). In its comments on the proposed 40 CFR part 197, NAS stated that our RMEI approach is ''broadly consistent with the TYMS report's recommendations'' (Docket No. A–95–12, Item IV–D–31). Given this acknowledgment by NAS, and that our evaluation of public comments identified no significant deficiencies in our proposed approach, we see no compelling reason to change our position that the RMEI is the appropriate method to use at Yucca Mountain.

Exposure scenario for the RMEI. A major part of the exposure scenario is the RMEI's location. To make this decision, we collected and evaluated information about the Yucca Mountain area's natural geologic and hydrologic features that may preclude drilling for water at a specific location, such as topography, geologic structure, aquifer depth and quality, and water accessibility. Based upon this information and the current understanding of ground water flow in the Yucca Mountain area, it appears that individuals theoretically could reside anywhere along the projected ground water flow path extending from Forty-Mile Wash, starting approximately five kilometers (km) from the repository location, to the southwestern part of the Town of Amargosa Valley, Nevada, where the ground water is close to the land surface and where most of the farming in the area occurs. However, in practice an individual's ability to reside at any particular point depends upon the available resources. To explore these variations, we developed four scenarios (described in the preamble to the proposed rule). See Chapter 8 of the BID for a fuller version of our evaluation of the factors associated with these scenarios. In developing scenarios, we assumed that the level of technology and economic considerations affecting population distributions and life styles in the future are the same as today (for more detail on this assumption, see the *What Do Our Standards Assume About the Future Biosphere?* section below). See below for a fuller discussion of our

choice for the RMEI's location. We requested comments regarding the appropriateness of these scenarios and our preferred choice.

We selected a rural-residential RMEI as the basis of our individual exposure scenario. We assume that the rural-residential RMEI, is exposed through the same general pathways as a subsistence farmer. However, this RMEI would not be a full-time farmer. Rather, this RMEI, as part of a community typical of Amargosa Valley, might do personal gardening and earn income from other sources of work in the area. We assume further that the RMEI drinks two liters per day of water contaminated with radionuclides, and some of the food (based upon surveys) consumed by the RMEI is from the Town of Amargosa Valley. We consider the consumption of two liters per day of drinking water to be a high-exposure value because people consume water and other liquids from outside sources, such as commercial products. We intended that it would push the dose estimates towards a ''reasonably maximal exposure.'' Similarly, we assume that local food production will use water contaminated with radionuclides released from the disposal system. We believe this lifestyle is similar to that of most people living in Amargosa Valley today.

We received comments stating that: we should be more specific in defining characteristics of the RMEI; we should take future changes in population, land use, climate, and biota into consideration; and that something other than a rural-residential lifestyle would be a more appropriate choice.

One comment suggested that we should be more specific in setting the location, behavior, and lifestyle, or allow NRC to make that choice. There were also a few comments stating that NRC should specify the parameter values. We believe that we have specified the characteristics of the rural-residential RMEI in the detail necessary, given our current understanding, for the concept to be implemented as we intend. We also believe that our specification of the parameter values such as location for the RMEI and drinking water intake rate is appropriate and necessary for our standard to be implemented in the context in which we developed it. We further believe we have the authority to specify other parameter values; however, we believe that NRC, in its role as the licensing authority, can and should set most of the details for implementing the standard, such as water usage in the community where the RMEI resides. Also, under our standard, NRC has the flexibility to make any assumptions, other than those we specified (assumptions we specified include location, water intake rate, and diet reflective of current residents of the Town of Amargosa Valley), if alternative selections prove to be more appropriate for implementing the standard as we intend. The location we specified is not a fixed point but rather it must be in the accessible environment above the highest concentration of radionuclides in the plume of contamination. To assess water usage in the hypothetical community, DOE and NRC could use an approach similar to the representative volume approach described later in this document (*How Does Our Rule Protect Ground Water?*). In doing so, the NRC may wish to consider the volume we specified as the representative volume for ground water protection (*i.e.*, 3,000 acre-feet). Given the extreme technical difficulty in modeling the small volumes of water used by an individual, it would be reasonable for DOE and NRC to assume that the RMEI is one of a number of people (in the hypothetical ''community'' of which the RMEI is a member) withdrawing water from the plume of contamination. Such an approach would involve assumptions about the number of people withdrawing water and the various uses for which the water is withdrawn, which would define the overall volume of water. The RMEI would then be a representative person using water with ''average'' concentrations of radionuclides. These assumptions should be reflective of current water uses in the projected path of the plume of contamination.

Among the comments regarding our assumptions about future populations, land use, climate, and biota, one stated that it is arrogant, as well as insensitive, to assume that all future people will be like us today, and that it is unrealistic to assume that future population distribution, patterned as it is today, will be static. The comment is correct in that there are many possible futures. However, it is necessary to limit speculation about possible futures so that the performance assessments can provide meaningful input into the decision process and the decision process itself is not confounded with speculative alternatives. Therefore, we agreed with and followed NAS when it recommended, ''[i]n view of the almost unlimited possible future states of society * * * we have recommended that a particular set of assumptions be used about the biosphere * * * we recommend the use of assumptions that reflect current technologies and living patterns'' (NAS Report p. 122).

A similar question arose when we developed the implementing regulations for WIPP. We resolved the question by developing the ''future states'' assumption (see 40 CFR 194.25). The position we have taken for the Yucca Mountain standards is consistent with our previous approach to this question.

There was a spectrum of suggestions recommending alternative RMEIs (from a fetus to the elderly and infirm). For example, one comment suggested pregnant women and the unborn within their wombs, children, the infirm, and the elderly as appropriate RMEIs. Other commenters urged using a subsistence farmer. Regarding the various ages and stages of human development, the risk value used for the development of cancer is an overall average risk value (see Chapter 6 of the BID for more details) that includes all exposure pathways, both genders, all ages, and most radionuclides. However, it does not cover the ''unborn within the womb.'' It is thought that the risk to the unborn is similar to that for those who have been born; however, the exposure period for the unborn is very short compared to the rest of the individual's average lifetime (see Chapter 6 of the BID for a discussion of cancer risk from *in utero* exposure). Therefore, the risk is proportionately lower and thus would not have a significant impact upon the overall risk incurred by an individual over a lifetime. On the other end of the spectrum, radiation exposure of the elderly at the levels of the individual-protection standard would be less than the overall risk value because they have fewer years to live and, therefore, fewer years for a fatal cancer to develop.

Some comments on our RMEI characteristics stated that they need to be more site-specific and should consider the alternative lifestyles of Native Americans. Other comments stated that the characteristics and location of the RMEI are implementation issues that should be left for determination by NRC. We believe that the final rule achieves the proper balance of site-specific characteristics that is fully protective of the public health and safety, and that the attributes of the RMEI specified in this rule are necessary to ensure that the Yucca Mountain disposal system achieves the level of protection that we intend.

Location of the RMEI. The location of the RMEI is a basic part of the exposure scenario. We considered locations within a region occupying an area bordering Forty-Mile Wash, within a few kilometers of the repository site, to

the southwestern border of the Town of Amargosa Valley. This region, which we believe is hydrologically downgradient from Yucca Mountain, can be considered as three general subareas. See the preamble to the proposed rule, 64 FR 46989–46990, for a fuller discussion of these subareas.

Based upon these considerations of the subareas, we proposed the intersection of U.S. Route 95 and Nevada State Route 373, known as Lathrop Wells, as the point where the RMEI would reside. We consider it improbable that the rural-residential RMEI would occupy locations significantly north of U.S. Route 95, because the rough terrain and increasing depth to ground water nearer Yucca Mountain would likely discourage settlement by individuals because access to water is more difficult than it would be a few kilometers farther south. Also, there are currently several residents and businesses near this location whose source of water is the underlying aquifer (which we understand flows beneath Yucca Mountain). Therefore, we believe it is reasonable to assume that a rural community could be located near this intersection in the future, and that population increases in the short term would cluster preferentially around the main roads through the area.

We are requiring that the RMEI be located in the accessible environment (*i.e.*, outside the controlled area) above the highest concentration of radionuclides in the plume of contamination. Based upon a review of available site-specific information (see Chapter 8 of the BID), we have chosen the latitude of the southern edge of the Nevada Test Site (corresponding to the line of latitude 36° 40′ 13.6661″ North (described in Docket A–95–12, Item V–A–29)), as the southernmost extent of the controlled area, *i.e.*, DOE and NRC could establish the southern boundary of the controlled area farther north (and presumably the location of the RMEI), but no farther south (see *Where Will Compliance With the Ground Water Standards be Assessed?*). (Even if the RMEI were to be located north of this line of latitude, the RMEI must still have the characteristics described in § 197.21.). As noted above, we proposed the intersection of U.S. Route 95 and Nevada State Route 373 (*i.e.*, Lathrop Wells) as the location of the RMEI. After further review, we determined that the southern edge of NTS would be a more appropriate maximum distance from the repository footprint than the location we proposed because of Nye County's plans to develop the area between the intersection at Lathrop Wells and NTS and the potential for members of the public to reside in that same area (Docket No. A–95–12, Items V–14, 15, 16). This location is also slightly more protective than the Lathrop Wells location since it is approximately 2 km closer to the repository footprint, but still falls within the conditions which led us to propose the Lathrop Wells intersection, *e.g.*, the ground water is not significantly deeper than at the intersection and the soil conditions are the same.

Commercial farming occurs today farther south, in the southwestern portion of the Town of Amargosa Valley in an area near the California border and west of Nevada State Route 373. However, soil conditions in the vicinity of Lathrop Wells are similar to those in southwestern Amargosa Valley. Therefore, it should be feasible for the RMEI to grow some food, using contaminated water tapped by a well. We believe that it is reasonable to assume that other gardening, farming, and raising of domestic animals could occur using contaminated water (see Appendix IV of the BID). We have specified that selected parameters, such as the percentage of food grown by the RMEI, should reflect the lifestyles of current residents of the Town of Amargosa Valley.

Finally, we believe a rural-residential RMEI slightly north of Lathrop Wells would be among the most highly exposed individuals downgradient from Yucca Mountain, even though the ground water nearer the repository could contain higher concentrations of radionuclides. If individuals lived nearer the repository, they would be unlikely to withdraw water from the significantly greater depth for other than domestic use, and in the much larger quantities needed for gardening or farming activities because of the significant cost of finding and withdrawing the ground water. It is possible, therefore, for an individual located closer to the repository to incur exposures from contaminated drinking water, but not from ingestion of contaminated food. Based upon our analyses of potential pathways of exposure, discussed above, we believe that use of contaminated ground water (*e.g.*, drinking water and irrigation of crops) would be the most likely pathway for most of the dose from the most soluble, more mobile radionuclides (such as technetium–99 and iodine–129). The percentage of the dose that results from irrigation would depend upon assumptions about the fraction of all food consumed by the RMEI from gardening or other crops grown using contaminated water, which should reflect the lifestyle of current residents of the Town of Amargosa Valley. Therefore, the exposure for an RMEI located approximately 18 km south of the repository (where ingestion of locally grown contaminated food is a reasonable assumption) actually would be more conservative than an RMEI located much closer to the repository who is exposed primarily through drinking water. We also are establishing that protection of a rural-residential RMEI would be protective of the general population downgradient from Yucca Mountain (see the *How Do Our Standards Protect the General Population?* section below).

As stated above, the method of calculating the RMEI dose is to select average values for most parameters except one or a few of the most sensitive, which are set at their maximum. We believe that an RMEI location above the highest concentration in the plume of contamination in the accessible environment and a consumption rate of two liters per day of drinking water from the plume of contamination represent high-end values for two of these factors. The NRC may identify additional parameters to assign high-end values in projecting the dose to the RMEI. To the extent possible, NRC should use site-specific information for any remaining factors. For example, NRC should use site-specific projections of the amount of contaminated food that would be ingested in the future. The NRC might base projections upon surveys that indicate the percentage of the total diet of Amargosa Valley residents from food grown in the Amargosa Valley area.

We requested comment regarding the potential approaches and assumptions for the exposure scenario to be used for calculating the dose incurred by the RMEI, particularly whether:

(1) Based upon the above criteria, there is now sufficient information for us to adequately support a choice for the RMEI location in the final rule or should we leave that determination to NRC in its licensing process based upon our criteria;

(2) Another location in one of the three subareas identified previously should be the location of the RMEI; and

(3) Lathrop Wells and an ingestion rate of two liters per day of drinking water are appropriate high-end values for parameters to be used to project doses to the RMEI.

Of the three subjects listed above, the only comments we received suggested different locations for the RMEI. A few commenters thought that the Lathrop Wells location is appropriate. However, a number of others stated that the

RMEI's location should be at the edge of the footprint of the repository. Finally, one commenter suggested that 30 kilometers away from the repository (in the current farming area in southern Amargosa Valley) would be reasonable; however, this commenter also stated that Lathrop Wells would be acceptable using the rural-residential scenario to provide conservatism to protect public health and safety.

As stated earlier, we are designating the location above the point of highest concentration in the plume of contamination in the accessible environment (no farther south than 36° 40′ 13.6661″ North) as the location of the RMEI. This point would be approximately 18 kilometers south of the repository footprint. We do not believe that an RMEI likely would live much farther north of the compliance point (toward Yucca Mountain) because of the increasing depth to ground water and the increasing roughness of the terrain. In addition, we believe that, at approximately 18 km, a rural-resident RMEI will likely have the highest potential doses in the region because of both drinking contaminated water and eating food grown using contaminated water. That is, the rural resident at 18 km will receive a higher dose than would an individual living much closer to Yucca Mountain because the cost of extracting the water likely will allow only drinking the water and not having a garden capable of supplying a portion of an individual's annual food consumption (see Chapters 7 and 8 of the BID). Likewise, we do not believe that hypothesizing that the RMEI lives 30 km away is a cautious, but reasonable, assumption because: (1) At 30 km, the RMEI likely would use water that contains much lower concentrations of (*i.e.*, more diluted) radionuclides; (2) the downgradient residents closest to Yucca Mountain are currently near Lathrop Wells; and (3) Nye County's short-term projections (20 years) show population growth at and near that location (see Docket No. A–95–12, Items V–A–14, V–A–15, and V–A–16). Therefore, a distance of 18 km adds to the conservatism and provides more protection of public health, relative to one commenter's suggested distance of 30 km.

There were a few other comments related to the location of the RMEI. For example, one comment stated that the location should take into account the geology and hydrology of the site rather than be chosen in advance. Another comment believes that we should base the location upon the ability of the RMEI to sustain itself consistent with topography and soil conditions. Further, this commenter believes that depth to ground water should not be a factor because it is impossible to predict either human activities or economic imperatives.

We determined the point of compliance for the individual-protection standard using site-specific factors and NAS's recommendation to use current conditions (NAS Report p. 54). In preparing to propose a compliance point for the RMEI, we collected and evaluated information on the natural geologic and hydrologic features, such as topography, geologic structure, aquifer depth, aquifer quality, and the quantity of ground water, that may preclude drilling for water at a specific location (see Chapter 7 of the BID). For example, as stated above, we do not believe that a rural-residential individual would occupy areas much closer to Yucca Mountain because of the increasingly rough terrain and the increasing depth to ground water. With increasing depth to ground water come higher costs: (1) To drill for water; (2) to explore for water; and (3) to pump the water to the surface. We agree that it is impossible to predict either human activities or economic imperatives. Therefore, we followed NAS's recommendation to use current conditions to avoid highly speculative scenarios. This approach leads us to considering the depth to ground water as a key factor in determining the location and activities of the RMEI. The current location of people living in the vicinity of the repository is a reflection of this key factor.

And, finally, one commenter stated that the proposed RMEI concept forces DOE to assume the RMEI will withdraw water from the highest concentration within the plume without consideration of its likelihood. Forcing such an assumption neglects the low probability that a well will intersect the highest concentration within the plume.

This commenter's approach, which would use a probabilistic method to determine the radionuclide concentration withdrawn by the RMEI, is similar to one of the example CG approaches that NAS provided in its report (NAS Report Appendix C). The NAS approach would use statistical sampling of various parameters, *i.e.*, considering the likelihood (probability) of various conditions existing to arrive at a dose for comparison to the standard. However, we did not use the probabilistic CG approach for the following reasons: (1) There is no relevant experience in applying the probabilistic CG approach, (2) the CG approach is very complex relative to the RMEI approach and is difficult to implement in a manner that assures it would meet the requirements of defining a CG, and (3) we are concerned that this approach does not appear to identify clearly which individual characteristics describe who is being protected. Finally, a significant majority of the public comments we received on the NAS Report opposed the probabilistic CG approach. We further believe that prudent public health policy requires that our approach be followed to provide reasonable conservatism. In this case, this is not a prediction of exactly whom will be exposed as much as it is a reasonable test of the performance of the repository. To allow the probability of any particular location being contaminated is not a prudent approach to the ultimate goal of testing acceptable performance.

e. *How Do our Standards Protect the General Population?* Pursuant to section 801(a)(2)(A) of the EnPA, one of the issues to be addressed by NAS in its study is whether an individual-protection standard will provide a reasonable standard for protection of the health and safety of the general public. NAS concluded that an individual-protection standard could provide such protection in the case of the Yucca Mountain disposal system. The NAS premised this conclusion on the condition that the public and policymakers would accept the idea that extremely small individual radiation doses spread out over large populations pose a negligible risk (NAS Report p. 57). The NAS refers to this concept as ''negligible incremental risk'' (NIR) (NAS Report p. 59). See the preamble to the proposed rule for a detailed discussion of NAS's concept of NIR (64 FR 46990–46991).

We agree with NAS that an individual-protection standard can adequately protect the general population near Yucca Mountain because of the particular characteristics of the Yucca Mountain site. However, we chose not to adopt either a negligible incremental dose (NID) or NIR level because we are concerned that such an approach is not appropriate in all circumstances, and because of reservations regarding NAS's reasoning and analysis. We based our determination that an individual-risk standard is adequate to protect both the local and general population on considerations unique to the Yucca Mountain site. This is not, however, a general policy judgment by us regarding other uses of the NID or NIR concepts.

As noted in the preamble to the proposal (64 FR 46990), NAS referred to the NID level of 10 μSv (1 mrem)/yr per

source or practice recommended by the NCRP. The International Atomic Energy Agency (IAEA) has made similar recommendations regarding exemptions in its Safety Series No. 89, ''Principles for the Exemption of Radiation Sources and Practices from Regulatory Control'' (1998) (Docket No. A–95–12, Item II–A–6). The IAEA has recommended that individual doses not exceed 10 μSv (1 mrem)/yr from each exempt practice (IAEA Safety Series No. 89, p. 10). The IAEA's recommendations relate to criteria for exempting whole sources or practices, such as waste disposal or recycling generally, not whether radiation doses from a portion of a given practice, such as the release of gases from a specific geologic repository, may be considered negligible. Finally, the IAEA's recommendations intend the exemption to be for sources and practices ''which are inherently safe'' (IAEA Safety Series No. 89, p. 11). It is not clear that the low individual doses or risks projected from gaseous releases from the Yucca Mountain repository should be considered on their own as a ''source'' or ''practice,'' given the definitions of these terms in IAEA's Safety Series No. 89. Further, given the extraordinarily large inventory of long-lived radionuclides to be disposed of in the Yucca Mountain repository, it is not clear that such a source or practice should be considered inherently safe. Also, we believe it is inappropriate to not calculate a radiation dose merely because the dose rate from a particular source is small.

Further, we do not believe it is appropriate to apply the NIR concept to consideration of population dose. A recent NCRP report questions the application of the NID concept to population doses. According to NCRP Report No. 121: ''(a) Concept such as the NID (Negligible Incremental Dose) provides a legitimate lower limit below which action to further reduce individual dose is unwarranted, but it is not necessarily a legitimate cut-off dose level for the calculation of collective dose. Collective dose addresses societal risk while the NID and related concepts address individual risk.'' (Principles and Application of Collective Dose in Radiation Protection, NCRP Report No. 121, Docket No. A–95–12, Item II–A–8). Based upon this principle, we think it inappropriate to use the NID or NIR concept to evaluate whether an individual-protection standard adequately protects the general population.

In summary, we are establishing an individual-protection standard for Yucca Mountain that will limit the annual radiation dose incurred by the RMEI to 150 μSv (15 mrem) CEDE. At the same time, we chose not to adopt a separate limit on radiation releases for the purpose of protecting the general population. Instead, we recommended in our proposal that DOE estimate and consider collective dose in its analyses. We based this recommendation upon several factors. The first factor is NAS's projection of extremely small doses to individuals resulting from air releases from Yucca Mountain. That dose level is well below the risk corresponding to our individual-protection standard for Yucca Mountain. It is also well below the level that we have regulated in the past through other regulations. Further, while we decline to establish a general Negligible Incremental Risk (NIR) level, we do agree with NAS that estimating the number of health effects resulting from a 0.0003 mrem/yr dose equivalent rate (NAS Report p. 59), in addition to the dose rate from background radiation, in the general population is uncertain and controversial. The second major factor is that, based upon current and site-specific conditions near Yucca Mountain, there is not likely to be great dilution resulting in exposure of a large population. In addition, we are establishing additional ground water protection standards that would set specific limits to protect users of ground water and that protect ground water as a resource. Finally, we require that all of the pathways, including air and ground water, be analyzed by DOE and considered by NRC under the individual-protection standard. We requested comment on this approach. We requested that commenters who disagree with this approach specifically address why it is inappropriate for the Yucca Mountain disposal system and make suggestions about how we might reasonably address this issue.

Most comments supported not establishing a collective-dose limit for Yucca Mountain. Two comments supported our decision not to establish an NIR or NID level. The NAS went further by also opposing our suggestion that DOE estimate collective dose for use in examining design alternatives because it is inconsistent with the NAS Report and with our conclusion that a collective-dose limit is unnecessary for the purpose of protecting the general public. On page 57 of its report, NAS stated:

> ''Earlier in this chapter, we recommend the form for a Yucca Mountain standard based on individual risk. Congress has asked whether standards intended to protect individuals would also protect the general public in the case of Yucca Mountain. We conclude that the form of the standards we have recommended would do so, provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk. This latter requirement exists for all forms of the standards, including that in 40 CFR (part) 191. We recommend addressing this problem by adopting the principle of negligible incremental risk to individuals.
>
> ''The question posed by Congress is important because limiting individual dose or risk does not automatically guarantee that adequate protection is provided to the general public for all possible repository sites or for the Yucca Mountain site in particular. As described in the previous section, the individual-risk standard should be constructed explicitly to protect a critical group that is composed of a few persons most at risk from releases from the repository. The standards are then set to limit the risk to the average member of that group. Larger populations outside the critical group might also be exposed to a lower, but still significant, risk. It is possible that a higher level of protection for this population represented by a lower level of risk than the one established by the standards might be considered.''

The NAS also states: ''(O)n a collective basis, the risks to future local populations are unknowable. We conclude that there is no technical basis for establishing a collective population-risk standard that would limit risk to the nearby population of the proposed Yucca Mountain repository'' (NAS Report p. 120)

After consideration of comments received on this question, we have determined that it is not necessary for us to recommend that DOE calculate collective dose, primarily because we believe the individual-protection standard will adequately protect the general population.

f. *What Do Our Standards Assume About the Future Biosphere?* For assessments of potential exposures, there are two important aspects of defining the future biosphere characteristics: the selection of parameter values to define the natural characteristics of the site, and the assumptions necessary to define the characteristics of the potentially exposed population. Examples of the site's natural characteristics include rainfall projections and the hydrologic characteristics of the rocks through which radionuclides may migrate. Examples of the assumptions necessary to define the potentially exposed population's characteristics include assumptions regarding population distributions, lifestyles, and eating habits.

In conducting required analyses of repository performance, including the performance assessment for determining compliance with the standards, the assessment for determining compliance

with the ground water standards, and the human-intrusion analysis, DOE and NRC may not assume that future geologic, hydrologic, and climatic conditions will be the same as they are at present. We require that these conditions be varied within reasonably ascertainable bounds over the required compliance period. We are imposing this requirement, which is consistent with the recommendation of the NAS Report, because we believe it is possible to reasonably bound the parameter values in the performance assessment that relate to these conditions.

To avoid unsupportable speculation regarding human activities and conditions, we believe it is appropriate to assume that other parameters describing human activities and interactions with the repository (such as the level of human knowledge and technical capability, human physiology and nutritional needs, general lifestyles and food consumption patterns of the population, and potential pathways through the biosphere leading to radiation exposure of humans) will remain as they are today. Consistent with the NAS Report, we believe there may be an essentially unlimited number of predictions that could be made about future human societies, with an unlimited number of potential impacts on the significance of future risk and dose effects. Regulatory decision making involving many speculative scenarios for future societies and impacts would become extraordinarily difficult without any demonstrable improvement in public health and safety and should be avoided as much as possible. Therefore, DOE and NRC must assume that future states applicable to the repository, except for geologic, hydrologic, and climatic conditions, will remain unchanged from the time of licensing.

Comments we received on this subject strongly favored our approach, particularly with respect to changes in natural conditions. The comments noted that climatic variations should be expected to occur over the time frames for which performance projections are made because the climate has changed in the past. Another reason to consider climatic changes is that these changes could have a significant effect on repository performance in comparison to performance projections made using current day conditions. Comments also pointed out the seismically active nature of the area and implied that DOE should examine the effects of seismic activity on the disposal system's performance. Here again, we require DOE to consider variations in geologic conditions. The approach we proposed on this subject is consistent with the approach we used for the WIPP certification (40 CFR 194.25) and NAS's recommendations. We received no comments opposing this approach.

g. *How Far Into the Future Is It Reasonable To Project Disposal System Performance?* The NAS recommended that the time over which compliance should be assessed (the compliance period) should be ''the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment'' (NAS Report p. 7). The NAS stated that the bases for its recommendation were technical, not policy, considerations (NAS Report pp. 54–56). The NAS acknowledged, however, that this is not solely a technical decision, and that policy considerations could be important to the decision (NAS Report p. 56). We agree that the selection of the compliance period necessarily involves both technical and policy considerations. For example, as NAS pointed out, we could decide that it is appropriate to establish similar policies for managing risks ''from disposal of both long-lived hazardous nonradioactive materials and radioactive materials'' (NAS Report p. 56). Such a decision necessarily would result in a compliance period that is less than the period of geologic stability. As NAS recognized, we had to consider, in this rulemaking, both the technical and policy issues associated with establishing the appropriate compliance period for the performance assessment of the Yucca Mountain disposal system.

We offered for comment two alternatives for the compliance period for the individual-protection standard. One alternative was to adopt a compliance period as the time to peak dose within the period of geologic stability. The second alternative was to adopt a fixed time period during which the repository must meet the disposal standards.

For the reasons discussed below, we selected the second alternative, which establishes a regulatory time period of 10,000 years. Therefore, the peak dose within 10,000 years after disposal must comply with the individual-protection standard. In addition, we require calculation of the peak dose within the period of geologic stability. The intent of examining the disposal system's performance after 10,000 years is to project its longer-term performance. We require DOE to include the results and bases of the additional analyses in the EIS for Yucca Mountain as an indicator of the future performance of the disposal system. The rule does not, however, require that DOE meet a specific dose limit after 10,000 years. We have concerns regarding the uncertainties associated with such projections, and whether very long-term projections can be considered meaningful; however, existing performance assessment results indicate that the peak dose may occur beyond 10,000 years (see Chapter 7, Section 7.3, of the BID). Such results may, therefore, give a more complete description of repository behavior. We acknowledge, however, that these results, because of the inherent uncertainties associated with such long-term projections, are not likely to be of the quality necessary to support regulatory decisions based upon a quantitative analysis and thus need to be considered cautiously. In any case, these very long-term projections will provide more complete information on disposal system performance.

As discussed below in section III.B.2.a (*What Limits Are There on Factors Included in the Performance Assessment?*), the principal tool used to assess compliance with the individual-protection standard is a quantitative performance assessment. This method relies upon sophisticated computer modeling of the potential processes and events leading to releases of radionuclides from the disposal system, subsequent radionuclide transport, and consequent health impacts. To consider compliance for any length of time, several facets of knowledge and technical capability are necessary. First, the scientific understanding of the relevant potential processes and events leading to releases must be sufficient to allow quantitative estimates of projected repository performance. Second, adequate analytical methods and numerical tools must exist to incorporate this understanding into quantitative assessments of compliance. Third, scientific understanding, data, and analytical methods must be adequately developed to allow evaluation of performance with sufficient robustness to judge compliance with reasonable expectation over the regulatory period. Finally, the analyses must be able to produce estimated results in a form capable of comparison with the standards.

The NAS evaluated these requirements for Yucca Mountain. First, it concluded that those aspects of disposal system and waste behavior that depend upon physical and geologic properties can be estimated within reasonable limits of uncertainty. Also, NAS believed that these properties and processes are sufficiently understood and boundable [11] over the long periods

[11] We define ''boundable'' to mean that these properties and processes fall within certain limits. We are defining probabilities of occurrence below

at issue to make such calculations possible and meaningful. The NAS acknowledged that these factors cannot be calculated precisely, but concluded that there is a substantial scientific basis for making such calculations. The NAS concluded that by considering uncertainties and natural variations, it would be possible to estimate, for example, the concentration of radionuclides in ground water at different locations and the times of gaseous releases. Second, NAS concluded that the mathematical and numerical tools necessary to evaluate repository performance are available or could be developed as part of the standard-setting or compliance-determination processes. Third, NAS concluded that: ''[s]o long as the geologic regime remains relatively stable, it should be possible to assess the maximum risks with reasonable assurance'' (NAS Report p. 69). The NAS used the term ''geologic stability'' to describe the situation where geologic processes, such as earthquakes and erosion, that could affect the performance assessment of the Yucca Mountain disposal system are active or are expected to occur (NAS Report pp. 91–95). Based upon the use of the terms ''stable'' and ''boundable'' throughout the NAS Report, one can infer that NAS applied the term ''geologic stability'' or ''stable'' to the situation where the rate of processes and numeric range of individual physical properties could be bounded with reasonable certainty. The subsequent use of the term ''stable'' will not imply static conditions or processes. Rather, it will describe the properties and processes that can be bounded. Finally, NAS found that the established procedures of risk analysis should enable the results of each performance simulation of the disposal system to be combined into a single estimate for comparison with the standard.

We previously considered the question of the appropriate compliance period for land disposal of SNF, HLW, and TRU radioactive waste in the 40 CFR part 191 standards, where we promulgated a generic compliance period of 10,000 years. We set the 40 CFR part 191 compliance period at 10,000 years for three reasons:

(1) After that time, there is concern that the uncertainties in compliance assessment become unacceptably large (50 FR 38066, 38076, September 19, 1985);

(2) There are likely to be no exceptionally large geologic changes during that time (47 FR 58196, 58199, December 29, 1982); and

(3) Using time frames of less than10,000 years does not allow for valid comparisons among potential sites. For example, for 1,000 years, all of the generic sites analyzed appeared to contain the waste approximately equally both because of long ground water travel times at well-selected sites (47 FR 58196, 58199, December 29, 1982) and because of the containment capabilities of the engineered barrier systems (58 FR 66401, December 20, 1993).

The purpose of geologic disposal is to provide long-term barriers to the movement of radionuclides into the biosphere (NAS Report p. 19). As described earlier, DOE plans to locate the Yucca Mountain repository in tuff about 300 meters above the local water table. When the waste packages release nongaseous radionuclides, the released radionuclides most likely will be transported by water that moves through Yucca Mountain from the surface toward the underlying aquifer both horizontally between individual tuff layers and vertically downward, through fractures in the tuff layers. Once the radionuclides reach the aquifer, the ground water will carry them away from the repository in the direction of ground water flow in the aquifer. The most probable route for exposing humans to radiation resulting from releases from the Yucca Mountain disposal system is via withdrawal of contaminated water for local use. In the case of Yucca Mountain, DOE estimates that most radionuclides would not reach currently populated areas within10,000 years, because of the expected performance of the engineered barrier system (see Chapter 7 of the BID).

This finding alone seems to indicate that the compliance period for Yucca Mountain should be longer than 10,000 years to be protective; however, NAS concluded that the need to consider the exposures when they are calculated to occur must be weighed against the uncertainty associated with such calculations (NAS Report p. 72). As discussed below, exposures could occur over tens-of thousands to hundreds-of-thousands of years. As the compliance period is extended to such lengths, however, uncertainty generally increases and the resulting projected doses are increasingly meaningless from a policy perspective. The NAS stated that there are significant uncertainties in a performance assessment and that the overall uncertainty increases with time. Even so, NAS found that, ''* * * there is no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value'' (NAS Report p. 55). The NAS also stated that data and analyses of some of the factors that are uncertain early in the assessment might become more certain as the assessment progresses(NAS Report p. 72), though this would tend to apply more to assessments covering very long periods (*i.e.,* longer than 10,000 years). Also, NAS stated that many of the uncertainties in parameter values describing the geologic system are not due to the length of time but rather to the difficulty in estimating values of site characteristics that vary across the site. Thus, NAS concluded that the probabilities and consequences of the relevant features, events, and processes that could modify the way in which radionuclides are transported in the vicinity of Yucca Mountain, including climate change, seismic activity, and volcanic eruptions, ''are sufficiently boundable so that these factors can be included in performance assessments that extend over periods on the order of about one million years'' (NAS Report p. 91). As discussed below, we believe that such an approach is not practical for regulatory decisionmaking, which involves more than scientific performance projections using computer models.

Today's rule requires that DOE demonstrate compliance for a period of 10,000 years after disposal. As discussed above, NAS concluded ''there is no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value'' (NAS Report p. 55). Despite NAS's recommendation, we conclude that there is still considerable uncertainty as to whether current modeling capability allows development of computer models that will provide sufficiently meaningful and reliable projections over a time frame up to tens-of-thousands to hundreds-of-thousands of years. Simply because such models can provide projections for those time periods does not mean those projections are meaningful and reliable enough to establish a rational basis for regulatory decisionmaking. Furthermore, we are unaware of a policy basis that we could use to determine the ''level of proof'' or confidence necessary to determine compliance based upon projections of hundreds-of-thousands of years into the future. The NAS indicated that analyses of the performance of the Yucca Mountain disposal system dealing with the far future can be bounded; however, a large and cumulative amount of uncertainty is

which events are considered very unlikely and need not be considered in performance assessments. We are not otherwise constraining DOE or NRC in identifying bounding limits.

associated with those numerical projections. Setting a strict numerical standard at a level of risk acceptable today for the period of geologic stability would ignore this cumulative uncertainty and the extreme difficulty of using highly uncertain assessment results to determine compliance with that standard. We requested comments regarding the reasonableness of adopting the NAS-recommended compliance period or some other approach in lieu of the 10,000-year compliance period, which we favor and describe below. We also sought comment regarding whether it is possible to implement the NAS-recommended compliance period in a reasonable manner and how that could be done.

The selection of the compliance period for the individual-protection standard involves both technical and policy considerations. It was our responsibility to weigh both during this rulemaking. In addition to the technical guidance provided in the NAS Report, we considered several policy and technical factors that NAS did not fully address, as well as the experience of other EPA and international programs. As a result of these considerations, we are establishing a 10,000-year compliance period with a quantitative limit and a requirement to calculate the peak dose, using performance assessments, if the peak dose occurs after 10,000 years. Under this approach, DOE must make the performance assessment results for the post-10,000-year period part of the public record by including them in the EIS for Yucca Mountain.

In its discussion of the policy issues associated with the selection of the time period for compliance, NAS suggested that we might choose to establish consistent risk-management policies for long-lived, hazardous, nonradioactive materials and radioactive materials (NAS Report p. 56). We previously addressed the 10,000-year compliance period in the regulation of hazardous waste subject to land-disposal restrictions. Although they are subject to treatment standards to reduce their toxicity, some of these wastes, such as heavy metals, can essentially remain hazardous forever. Land disposal, as defined in 40 CFR 268.2(c), includes, but is not limited to, any placement of hazardous waste in land-based units such as landfills, surface impoundments, and injection wells. Facilities may seek an exemption from land disposal restrictions by demonstrating that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous (40 CFR 268.6). This period may include not only the operating phase of the facility, but also what may be an extensive period after facility closure. With respect to injection wells, we specifically required a demonstration that the injected fluid will not migrate from the injection well within 10,000 years (40 CFR 148.20(a)). We chose the 10,000-year performance period referenced in our guidance regarding no-migration petitions, in part, to be equal to time periods cited in draft or final DOE, NRC, and EPA regulations (10 CFR part 960, 10 CFR part 60, or 40 CFR part 191, respectively) governing siting, licensing, and releases from HLW disposal systems. With respect to other land-based units regulated under the Resource Conservation and Recovery Act (RCRA) hazardous-waste regulations, we concluded that the compliance period for a no-migration demonstration is specific to the waste and site under consideration. For example, for the WIPP no-migration petition, we found that ''it is not particularly useful to extend this model beyond 10,000 years into the future * * * (However, t)he agency does believe * * * that modeling over a 10,000-year period provides a useful tool in assessing the long-term stability of the repository and the potential for migration of hazardous constituents'' (55 FR 13068, 13073, April 6, 1990). Thus, establishing a 10,000 year compliance period for Yucca Mountain is consistent with risk-management policies that we have established for other long-lived, hazardous materials.

Second, the individual-protection requirements in 40 CFR part 191 (58 FR 66398, 66414, December 20, 1993) have a compliance period of 10,000 years. The 40 CFR part 191 standards apply to the same types of waste and type of disposal system as will be present at Yucca Mountain. Therefore, the use of a 10,000 year time period in this regulation is consistent with 40 CFR part 191. However, as we explained in the *What is the History of Today's Action?* section earlier in this document, by statute the 40 CFR part 191 requirements do not apply to Yucca Mountain (WIPP LWA, section 8(b)). Nevertheless, we deem this consistency appropriate because both sets of standards apply to the same types of waste. Moreover, though the WIPP LWA exempts Yucca Mountain from the 40 CFR part 191 standards, it does not prohibit us from imposing standards on Yucca Mountain that are similar to the 40 CFR part 191 standards, if, as discussed previously, we determine in this rulemaking that the imposition of such standards is appropriate. The question of uncertainties over long time frames and the use of performance projections over those time frames for regulatory decisionmaking has been examined a number of times in our rulemaking (40 CFR parts 191 and 194) with a consistent conclusion that 10,000 years is the appropriate choice for a compliance period.

Although 40 CFR part 191 itself does not directly apply to Yucca Mountain, the necessity to identify a generic compliance period is an important component of the development of radioactive waste standards, including the Yucca Mountain standards. In a regulatory approval process, a judgment is necessary about the technical reliability of repository performance projections. This consensus would involve the applicant, the regulatory authority, and the technical community in general. In the face of increasing uncertainties in projecting repository performance over hundreds-of-thousands of years, the potential for technical consensus on the reliability of these projections would decrease sharply. This decrease would lead to a dramatic increase in the difficulty of making a compliance decision related to such an extended time period. In setting the compliance period in 40 CFR part 191 at 10,000 years, we addressed the issue of increasing uncertainty by having a fixed time period rather than requiring that the time period be determined individually for any repository undergoing evaluation.

Third, we are concerned that there might be large uncertainty in projecting human exposure due to releases from the repository over extremely long periods. We agree with NAS's conclusion that it is possible to evaluate the performance of the Yucca Mountain disposal system and the surrounding lithosphere within certain bounds for relatively long periods. However, we believe that NAS might not have fully addressed two aspects of uncertainty.

One of the aspects of uncertainty relates to the impact of long-term natural changes in climate and its effect upon choosing an appropriate RMEI. For extremely long periods, major changes in the global climate, for example, a transition to a glacial climate, could occur (see Chapter 7 of the BID). We believe, however, that over the next 10,000 years, the biosphere in the Yucca Mountain area probably will remain, in general, similar to present-day conditions due to the rain-shadow effect of the Sierra Nevada Mountains, which lie to the west of Yucca Mountain (see Chapter 7 of the BID). As discussed

by NAS, however, for the longer periods contemplated for the alternative of time to peak dose, the global climate regime is virtually certain to pass through several glacial-interglacial cycles, with the majority of time spent in the glacial state (NAS Report p. 91). These longer periods would require the specification of exposure scenarios that would not be based upon current knowledge or cautious, but reasonable, assumptions, but rather upon potentially arbitrary assumptions. The NAS indicated that it knew of no scientific basis for identifying such scenarios (NAS Report p. 96). It is for these reasons that such extremely long-term calculations are useful only as indicators, rather than accurate predictors, of the long-term performance of the Yucca Mountain disposal system (IAEA TECDOC–767, p. 19, 1994, Docket No. A–95–12, Item II-A–5).

The other aspect of uncertainty concerns the range of possible biosphere conditions and human behavior. As IAEA noted, beyond 10,000 years it may be possible to make general predictions about geological conditions; however, the range of possible biospheric conditions and human behavior is too wide to allow ''reliable modeling'' (IAEA–TECDOC–767, p. 19, Docket No. A–95–12, Item II–A–5). It is necessary to make certain assumptions regarding the biosphere, even for the 10,000-year alternative, because 10,000 years represents a very long compliance period for current-day assessments to project performance. For example, it is twice as long as recorded human history (see *What Do Our Standards Assume About the Future Biosphere?,* section III.B.1.f, earlier in this document). For periods approaching the 1,000,000 years that NAS contemplated under the peak-dose alternative, even human evolutionary changes become possible. Thus, reliable modeling of human exposure may be untenable and regulation to the time of peak dose within the period of geologic stability could become arbitrary. Again, the rational basis necessary for regulatory decisionmaking would be difficult or impossible to achieve because of the speculative assumptions that would be involved.

Fourth, many international geologic disposal programs use a 10,000-year period for assessing repository performance (see, *e.g.,* Chapter 3 of the BID, Docket No. A–95–12, Item III–B–2 or GAO/RCED–94–172, 1994, Docket No. A–95–12, Item V–A–7). These disposal programs also have examined this question and have opted to use a fixed time rather than one based only on a site-specific compliance period.

Finally, an additional complication associated with the time to peak dose within the period of geologic stability is that it could lead to a period of regulation that has never been implemented in a national or international radiation regulatory program. Focusing upon a 10,000-year compliance period forces more emphasis upon those features over which humans can exert some control, such as repository design and engineered barriers. Those features, the geologic barriers, and their interactions define the waste isolation capability of the disposal system. By focusing upon an analysis of the features that humans can influence or dictate at the site, it may be possible to influence the timing and magnitude of the peak dose, even over times longer than 10,000 years.

Based on the extensive public comment, consistency with other EPA radioactive and non-radioactive waste disposal programs, and a consideration of the numerous uncertainties associated with projecting repository performance over extended time periods, our final rule establishes the following requirements for the individual-protection standard and the human-intrusion analysis. For the individual-protection standard, a 10,000-year performance assessment is required for comparison against the 15 mrem standard. In addition, a post-10,000-year analysis of peak dose incurred by the RMEI is to be included in the EIS for Yucca Mountain, but is not to be held to a particular dose limit. We view the post-10,000-year analysis as an indicator of long-term performance that provides more complete information. For the human-intrusion analysis, DOE must determine the earliest time at which the human intrusion specified in the standard will occur. Should the intrusion occur at or before 10,000 years after disposal, DOE must demonstrate that the RMEI receives no more than 15 mrem/yr as a result of the intrusion (again, analytical results beyond 10,000 years are not judged against a dose limit, but must be included in the EIS). Should the intrusion occur after 10,000 years, DOE must include the analysis in the EIS for Yucca Mountain as an indicator of long-term disposal system performance.

Public comment supported a compliance period that ranged from 10,000 years to a million years and beyond (i.e., no time limitation). Comments supporting the 10,000-year time period expressed concern that such a time period was the longest time over which it is possible to obtain meaningful modeling results. Some comments agreed with our position on the reliability of dose calculations well in excess of 10,000 years. Other comments noted that, aside from the unprecedented nature of compliance periods exceeding 10,000 years, the greater uncertainties present at such times only serve to complicate the licensing process with no clear cut greater public health benefit. A few comments agreed that, because there likely will be radiation doses to individuals beyond 10,000 years, DOE should calculate peak dose, within the time period of geologic stability, and include these doses in the Yucca Mountain EIS.

Numerous comments suggested that the compliance period should extend to times beyond 10,000 years. Foremost among these comments, NAS suggested a compliance period that would extend to the time of peak dose or risk, within the period of geologic stability for Yucca Mountain (as long as one million years), based on scientific considerations. Though NAS based its recommendation on scientific considerations, it recognized that such a decision also has policy aspects (NAS Report, p. 56), and that we might select an alternative more consistent with previous Agency policy. We believe the unprecedented nature of a compliance period beyond 10,000 years was very persuasive and related strongly to developing a meaningful standard that is reasonable to implement. We also harbored strong concerns related to uncertainty in projecting human radiation exposures over extremely long time periods, for the reasons mentioned earlier.

Some comments suggested that the compliance period of the standard should be comparable to the amount of time that the materials to be emplaced in the Yucca Mountain repository will remain hazardous. While the hazardous lifetime of radioactive waste is important, it is but one of a variety of factors that must be considered in projecting the potential risks from disposal. The ability of the disposal system to isolate such long-lived materials relates to the retardation characteristics of the whole hydrogeological system within and outside the repository, the effectiveness of engineered barriers, the characteristics and lifestyles associated with the potentially affected population, and numerous other factors in addition to the hazardous lifetime of the materials to be disposed.

Thus, for a variety of technical and policy reasons, we believe that a 10,000-year compliance period is meaningful, protective, and practical to implement. We also believe that its use will result in a robust disposal system that will

protect public health and the environment for time periods exceeding 10,000 years. We have included a 10,000-year compliance period in regulations for non-radioactive hazardous waste. A 10,000-year compliance period for Yucca Mountain, in conjunction with the requirements of our existing generally applicable standard at 40 CFR part 191, ensures that SNF, HLW, and TRU radioactive wastes disposed anywhere in the United States have the same compliance period. Imposing a compliance period beyond 10,000 years would be unprecedented both nationally and internationally. Further, such an action would carry significant and unmanageable uncertainties. Moreover, provisions to consider radiation dose impacts beyond 10,000 years as a part of the environmental impact review process provide more complete information on long-term disposal system performance. We believe this approach provides the appropriate balance that allows for meaningful consideration of the issues related to 10,000-year and post-10,000-year aspects of disposal system performance.

2. What Are the Requirements for Performance Assessments and Determinations of Compliance? (§§ 197.20, 197.25, and 197.30)

The NRC must decide whether to license the Yucca Mountain disposal system. It must make that decision based upon whether DOE has demonstrated compliance with our 40 CFR part 197 standards. We proposed the quantitative analysis underlying that decision will be a performance assessment (as defined in § 197.12). The DOE and NRC must also make some decisions about what factors to include in the performance assessments, and how extensive those assessments must be to satisfactorily demonstrate compliance. We have addressed some of these performance assessment aspects in our proposal and final rule.

a. What Limits Are There on Factors Included in the Performance Assessments? We proposed that the performance assessment exclude natural features, events, and processes based on the probability of occurrence. We based our proposed requirements for performance assessment on a review of NAS's recommendations, our knowledge regarding the extensive performance assessment work that DOE and NRC have undertaken regarding the Yucca Mountain site, and consistency with 40 CFR part 191 and its application in the WIPP certification. We also require NRC to determine, taking into consideration that performance assessment, whether the disposal system's projected performance complies with § 197.20. Projecting repository performance is the major tool to be used to develop information that will be used to make compliance decisions relative to our standards. To provide the necessary context for these assessments to generate results for regulatory decisionmaking, we must specify sufficient details to assure the standards are implemented as we intend through the use of performance assessments. We have specified only what we believe to be the minimum detail necessary. The remainder we believe should be left to NRC to determine, consistent with its implementing responsibilities and decisionmaking authority.

For repository performance assessments, our standards also require:

(1) That DOE exclude from performance assessments those natural features, events, and processes whose likelihood of occurrence is so small that they are very unlikely, which are those that DOE and NRC estimate to have less than a 1 in 10,000 (1×10^{-4}) chance of occurring during the 10,000 years after disposal. Probabilities below this level are associated with events such as the appearance of new volcanoes outside of known areas of volcanic activity or a cataclysmic meteor impact in the area of the repository. We believe there is little or no benefit to public health or the environment from trying to regulate the effects of such very unlikely events;

(2) Unlikely events with probabilities higher than stated in (1) above may be excluded from analyses for the human intrusion and ground water protection standards. We leave it to NRC to set the probability limit for these unlikely events in its implementing regulations; and

(3) That the performance assessment need not evaluate the releases from features, events, processes, and sequences of events and processes estimated to have a likelihood of occurrence greater than 1×10^{-4} of occurring during the 10,000 years following disposal, if there is a reasonable expectation that the results of the performance assessment would not be changed significantly by such omissions. As necessary, NRC may provide DOE with specific guidance regarding scenario selection and characterization to assure that DOE does not exclude features, events, or processes inappropriately.

We received only a few comments on the question of including low probability events; however, the comments we received supported our proposal. The comments also pointed out some potential confusion in the terms we used in describing unlikely versus very unlikely features, events, and processes. Our intent is to establish that there is no need to include, in the performance assessments used to demonstrate compliance with the individual-protection standard, features, events, and processes, and sequences of events and processes, with probabilities of less than 1×10^{-4} chance of occurring in the next 10,000 years. We consider it unlikely that features, events, and processes with such low probabilities of occurrence will occur. We intended to establish another demarcation for excluding unlikely features, events, and processes with a higher probability than stated above but that still have a low probability of occurrence. The DOE must include processes and events in this second category in the assessments for the individual-protection standard, unless NRC determines that excluding them would not affect the results of the assessments. The DOE may, however, exclude them from consideration in demonstrating compliance with the human-intrusion and ground water protection standards. We did not establish a particular probability level for these unlikely features, events, and processes. Instead, we deferred this decision to the implementing authority in § 197.36 of our final rule.

The comments we received on this question supported our contention that the geologic record is the best source of evidence for the frequency and magnitude of natural features, events, and processes that could affect repository performance, and that the geologic record is best preserved in the relatively recent past. More specifically, some comments suggested that the Quaternary Period should be the time frame over which DOE should examine evidence for rates and magnitudes of natural features, events, and processes. Because the Quaternary Period includes episodes of glaciation, it provides a means to estimate the potential effects of future climate variations. Further, we believe that the Period's duration (approximately two million years) provides an adequate time frame for estimating the frequency and severity of past seismic activity in the repository area. The NAS in its recommendations indicated that the repository area could be assumed to be ''geologically stable'' over a period of one million years for the purpose of bounding natural features, events, and processes. We believe that the Quaternary Period is a sufficiently long period of the geologic record to allow DOE to make reasonable

estimates of natural features, events, and processes. We chose not to identify a specific time frame in the regulatory language. We leave this choice to the implementing authority.

We allow the exclusion of unlikely natural features, events, and processes from both the ground water and human-intrusion assessments. The approach for the ground water protection requirements is consistent with subpart C of 40 CFR part 191, ''Environmental Standards for Ground-Water Protection.'' The approach for the human-intrusion analysis is consistent with NAS's recommendation (see the *What Is the Standard for Human Intrusion?* section later in this document). We requested public comment regarding whether this approach is appropriate for Yucca Mountain. See the response to Question #10 in section IV later in this document and the Response to Comments document for more information.

b. What Limits Are There on DOE's Elicitation of Expert Opinion? We requested public comment on whether we should include requirements on the use of expert opinion and, if so, what those requirements should be. We consider it likely, given the long time frames involved and the significant uncertainties in the likelihood of features, events, processes, and sequences of events and processes affecting the Yucca Mountain disposal system, that DOE will find it useful to obtain expert opinion to help it arrive at cautious but reasonable estimates of the probability of future occurrence of these features, events, processes, and sequences of events and processes. We also expect DOE to find expert opinion useful in assessing available performance assessment models, or in evaluating the uncertainties associated with the variation of parameter values.

In requesting public comment on this issue, we distinguished between expert judgment, which often is obtained informally, and expert elicitation, in which a more formal process is used. We focused on expert elicitation, and considered including one or all of the following requirements: (1) NRC must consider the source and use of the information so gathered; (2) we would have expected NRC to assure that, to the extent possible, experts with both expertise appropriate for the subject matter and independence from DOE will be on the expert elicitation panel consulted to judge the validity and adequacy of the model(s) or value(s) for use in a compliance assessment; and (3) we would have expected that, when DOE presents information to the expert elicitation panel, it should do so in a public meeting, and qualified experts, such as representatives of the States of Nevada and California, should be given an opportunity to present information.

The comments we received were uniformly opposed to our setting requirements to address expert opinion. There was general agreement among commenters that it would be more appropriate for NRC to use the licensing process to address any requirements relating to expert elicitation. Some commenters referred to NRC's NUREG–1563 (''Branch Technical Position on the Use of Expert Elicitation in the High-Level Radioactive Waste Program''), and to the fact that DOE has used it on several occasions. These comments reinforced our opinion that issuing requirements would be an implementation function better left to NRC. We do not expect to issue guidance on this topic, although we reserve the right to do so. We also recognize that such guidance would not be binding, unless it is promulgated by notice and comment rulemaking.

One comment suggested that we restrict the form the expert elicitation could take. The comment stated that it is inappropriate to estimate parameter values using Delphi surveys or other similar techniques that tend to ''exclude the public from vital areas of debate.'' Given that we leave the expert elicitation process to NRC and DOE, we choose not to address only this one particular aspect of that process because we believe that it would be inconsistent to impose any specific requirements on how DOE and NRC should use expert opinion. We believe that NRC and DOE are sufficiently sensitive to public opinion regarding the licensing of Yucca Mountain to avoid the appearance of secrecy or targeted polling of experts to obtain a specific outcome. Therefore, our rule does not address any aspects of DOE's ability to use expert elicitation.

c. What Level of Expectation Will Meet Our Standards? We use the concept of ''reasonable expectation'' in these standards to reflect our intent regarding the level of ''proof'' necessary for NRC to determine whether the projected performance of the Yucca Mountain disposal system complies with the standards (see §§ 197.20, 197.25, and 197.30). We intend for this term to convey our position that unequivocal numerical proof of compliance is neither necessary nor likely to be obtained for geologic disposal systems. We believe unequivocal proof is not possible because of the extremely long time periods involved and because disposal system performance assessments require extrapolations of conditions and the actions of processes that govern disposal system performance over those long time periods. The NRC has used a similar qualitative test, ''reasonable assurance,'' for many years in its regulations, and has proposed applying this concept in its Yucca Mountain regulations (proposed 10 CFR part 63). However, the NRC approach was taken from reactor licensing, which focuses on engineered systems with relatively short lifetimes, where performance projections can be verified and if necessary corrective actions are possible. We believe that for very long-term projections where confirmation is not possible, involving the interaction of natural systems with engineered systems complicated by the uncertainties associated with the long time periods involved, an approach that recognizes these difficulties is appropriate. Although NRC has adapted the reasonable assurance approach from the reactor framework and has applied it successfully in regulatory situations related to facility decommissioning and shallow-land waste burial, it has not been applied in a situation as complex as the Yucca Mountain disposal system. We believe that reasonable expectation provides an appropriate approach to compliance decisions; however, with respect to the level of expectation applicable in the licensing process, NRC may adopt its proposed alternative approach. We expect that any implementation approach NRC adopts will incorporate the elements of reasonable expectation listed in § 197.14. A more thorough discussion of our intent concerning the application of reasonable expectation is given below and a more exhaustive discussion of the subject is presented in the Response to Comments document for this regulation. We intend that the information in § 197.14 of the rule and discussions of reasonable expectation presented below and in the Response to Comments document will provide the necessary context for implementation of this concept.

The primary means for demonstrating compliance with the standards is the use of computer modeling to project the performance of the disposal system under the range of expected conditions. These modeling calculations involve the extrapolation of site conditions and the interactions of important processes over long time periods, extrapolations that involve inherent uncertainties in the necessarily limited amount of information that can be collected through field and laboratory studies and the unavoidable uncertainties involved in simulating the complex and time-

variable processes and events involved in long-term disposal system performance. Simplifications and assumptions are involved in these modeling efforts out of necessity because of the complexity and time frames involved, and the choices made will determine the extent to which the modeling simulations realistically simulate the disposal system's performance. If choices are made that make the simulations very unrealistic, the confidence that can be placed on modeling results is very limited. Inappropriate simplifications can mask the effects of processes that will in reality determine disposal system performance, if the uncertainties involved with these simplifications are not recognized. Overly conservative assumptions made in developing performance scenarios can bias the analyses in the direction of unrealistically extreme situations, which in reality may be highly improbable, and can deflect attention from questions critical to developing an adequate understanding of the expected features, events, and processes. For example, a typical approach to addressing areas of uncertainty is to perform ''bounding analyses'' of disposal system performance. If the uncertainties in site characterization information and the modeling of relevant features, events, and processes are not fully understood, results of bounding analyses may not be bounding at all. The reasonable expectation approach is aimed simply at focusing attention on understanding the uncertainties in projecting disposal system performance so that regulatory decision making will be done with a full understanding of the uncertainties involved.

We received comments both supporting and opposing the concept of ''reasonable expectation'' and its application to the Yucca Mountain standards. Comments in favor of the approach agreed that the consideration of uncertainty is extremely important to a proper perspective on the degree of confidence possible for projections of disposal system performance over the long time frames involved in assessing repository performance. Comments against the concept voiced variations on three basic concerns: (1) That the concept is ''new,'' ''untested,'' and of ''dubious legal authority'' in the regulatory framework; (2) that it implies that less rigorous, and therefore unacceptable, science and analysis would result from the use of reasonable expectation; and (3) that the choice of approach to compliance decision making is solely an implementation concern that we should leave to NRC.

With respect to the legal authority and use of the reasonable expectation concept in the regulatory process, we believe that the reasonable expectation concept is well established in both the regulatory language in standards, as well as in actual application to deep geologic disposal of radioactive wastes, and has been judicially tested. We developed the ''reasonable expectation'' approach in the context of developing 40 CFR part 191, the generic standards for land disposal of SNF, HLW, and TRU radioactive waste, and more importantly the concept has been applied successfully in the EPA certification of the Waste Isolation Pilot Plant (WIPP), a deep geologic repository for TRU radioactive wastes. The WIPP repository is to date the only deep geologic repository for radioactive wastes in the United States that has been carried through a regulatory approval process. Therefore, we believe that the reasonable expectation concept is neither ''new'' nor ''untried'', nor of ''dubious legal authority'' in the geologic repository regulatory experience. In fact, the use of reasonable expectation for the application to geologic disposal has been upheld in court (*Natural Resources Defense Council, Inc.* versus *U.S. E.P.A.* (824 F.2d 1258, 1293 (1st Cir. 1987))).

In contrast, the reasonable assurance concept was developed and applied many times in the context of reactor licensing—not in the context of deep geologic disposal efforts—and has not been used in a regulatory review and approval process for a deep geologic disposal system. The judicial decision cited in one comment refers to the use of reasonable assurance in the context of reactor licensing, not in the context of deep geologic disposal. While the reasonable assurance concept has an established record of successful application and judicial approval in reactor licensing, it is in fact largely untried in the arena of geologic disposal.

Some comments suggested our approach would allow the use of less rigorous science to the assessment of disposal system performance in licensing. This perception may have arisen from our choice of wording in the proposal, where we stated that NRC may elect to use a more ''stringent'' approach. Such an interpretation was not our intent: the full text of our statement is that NRC may impose requirements that are ''more stringent'' than the ''minimum requirements for implementation'' that our rule establishes; in addition, we clearly stated that reasonable expectation ''is less stringent than the reasonable assurance concept that NRC uses to license nuclear power plants'' (proposed § 197.14(b), emphasis added). However, we will clarify our meaning here. Performance projections for deep geologic disposal require the extrapolation of parameter values (site characteristics related to performance) and performance calculations (projections of radionuclide releases and transport from the repository) over very long time frames that make these projections fundamentally not confirmable, in contrast to the situation of reactor licensing where projections of performance are only made for a period of decades and confirmation of these projections is possible through continuing observation. In this sense, a reasonable expectation approach to repository licensing would be necessarily ''less stringent'' than an approach to reactor licensing. We therefore must disagree with these comments that reasonable expectation requires less rigorous proof than NRC's reasonable assurance approach.

We do not believe that the reasonable expectation approach either encourages or permits the use of less than rigorous science in developing assessments of repository performance for use in regulatory decision making. On the contrary, the reasonable expectation approach takes into account the inherent uncertainties involved in projecting disposal system performance, rather than making assumptions which reflect extreme values instead of the full range of possible parameter values. It requires that the uncertainties in site characteristics over long time frames and the long-term projections of expected performance for the repository are fully understood before regulatory decisions are made. This approach has a number of implications relative to the data and analyses that would be used in making regulatory decisions. Cautious use of bounding assessments is implied since sufficient understanding of uncertainties must be developed to be sure such analyses are truly bounding. Performance scenarios should be developed realistically without omitting important components simply because they may be difficult to quantify with high accuracy, or always assuming worst case values in the absence of information. Elicited values for relevant data should not be substituted for actual field and laboratory studies when they can be reasonably performed, simply to conserve resources or satisfy scheduling demands. The gathering of credible information that would allow a better

understanding of the uncertainties in site characterization data and engineered barrier performance that would bear on the long-term performance of the repository should not be subjugated simply for convenience. We do not believe that reasonable expectation in any way encourages less than rigorous science and analysis. In contrast, adequately understanding the inherent uncertainties in projecting repository performance over the time frames required must involve a rigorous scientific program of site characterization studies and laboratory testing.

Some comments expressed the opinion that our use of the reasonable expectation approach intrudes inappropriately into the area of implementation, which is the province of NRC. We do not believe that is the case. We have included the concept of reasonable expectation in the Yucca Mountain standards to provide a necessary context for understanding the standards and as context for the implementation of the licensing process NRC will perform. Projecting disposal system performance involves the extrapolation of physical conditions and the interaction of natural processes with the wastes for unprecedented time frames in human experience, i.e., many thousands of years. In this sense, the projections of the disposal system's long-term performance cannot be confirmed. Not only is the projected performance of the disposal system not subject to confirmation, the natural conditions in and around the repository site will vary over time and these changes are also not subject to confirmation, making their use in performance assessments equally problematical over the long-term (see Chapter 7 of the BID). In light of these fundamental limitations on assessing the disposal system's long-term performance, we believe that the approach used to evaluate disposal system performance must take into account the fundamental limitations involved (including the basic guidance given in § 197.14), and not hold out the prospect of a greater degree of ''proof'' than in reality can be obtained.

Relative to implementation, the primary task for the regulatory authority is to examine the performance case put forward by DOE to determine ''how much is enough'' in terms of the information and analyses presented, i.e., implementation involves how regulatory authority determines when the performance case has been demonstrated with an acceptable level of confidence. We have proposed no specific measures in our standards for that judgment. We have not specified any confidence measures for such judgments or numerical analyses, nor prescribed analytical methods that must be used for performance assessments, quality assurance measures that must be applied, statistical measures that define the number or complexity of analyses that should be performed, nor have we proposed any assurance measures in addition to the numerical limits in the standards. We have specified only that the mean of the dose assessments must meet the exposure limit, without specifying any statistical measures for the level of confidence necessary for compliance. We believe that measure is a minimal level for compliance determination, and we selected it to be consistent with the individual protection requirement we applied for the WIPP certification (40 CFR 194.55(f)). For the WIPP certification, EPA was also the implementing agency, and in 40 CFR part 194 we also included implementation requirements, including statistical confidence measures for the assessments and analytical approaches (§§ 194.55(b), (d), (f)) along with quality assurance requirements (§ 194.22), other assurance requirements (§ 194.41), requirements for modeling techniques and assumptions (§§ 194.23 and 25), use of peer review and expert judgment (§§ 194.26 and 194.27). We have not incorporated a similar level of detail in the Yucca Mountain standards because we believe we must specify only what is necessary to provide the context for implementation. We believe that our reasonable expectation approach provides a necessary context for understanding the intent of the standards and for its implementation. We have provided guidance statements in the standards (§ 197.14) relative to the approach that we believe appropriately address the inherent uncertainties in projecting the performance of the Yucca Mountain disposal system. The implementing agency is responsible for developing and executing the implementation process and, with respect to the level of expectation applicable in the licensing process, is free to adopt an approach it believes is appropriate, but we believe whatever approach is implemented must incorporate the aspects of reasonable expectation we have described in the standards and amplified upon in the Response to Comments document.

d. Are There Qualitative Requirements To Help Assure Protection? In the preamble to our proposed standards (64 FR 46998), we requested comment upon whether it is appropriate for us to establish assurance requirements in this final rule and if so, what those requirements should be. The majority of public comments on the issue stated that it was unnecessary for us to include assurance requirements in this rule. The commenters also generally stated that the inclusion of such requirements is an implementation matter that is properly within NRC's jurisdiction. No comments suggested what, if any, assurance requirements we should include in this final rule. Therefore, based upon the public comments we received regarding this rule, the provisions in 40 CFR part 191, and the provisions of NRC's proposed 10 CFR part 63, we did not include assurance requirements in this rule, though we believe we have the authority to do so pursuant to the AEA and the EnPA. For example, our generally applicable standards for the disposal of SNF, HLW, and TRU radioactive wastes (40 CFR part 191, 58 FR 66402, December 20, 1993; 50 FR 38073 and 38078, September 19, 1985) require the consideration of assurance requirements. The assurance requirements in 40 CFR part 191, however, do not apply to facilities that NRC regulates, based upon the understanding between EPA and NRC that NRC would include them in its licensing regulations in 10 CFR part 60. The NRC is the licensing agency for Yucca Mountain; therefore, at first glance it appears that requiring assurance requirements at Yucca Mountain would be inconsistent with our approach in 40 CFR part 191. The EnPA, however, mandates that we set site-specific standards for Yucca Mountain. We believe, therefore, that we could include assurance requirements in this rule. Because NRC's proposed licensing criteria (see 10 CFR 63.102, 63.111, and 63.113; 64 FR 8640, 8674–8677, February 22, 1999) contain requirements similar to the assurance requirements in 40 CFR part 191 for multiple barriers, institutional controls, monitoring, and the retrievability of waste from Yucca Mountain, we believe that it is unnecessary for us to include similar requirements in this rule. We encourage NRC to include the assurance requirements in the proposed 10 CFR part 63 (64 FR 8640), or requirements similar to those in 40 CFR part 191, in its final licensing regulations for Yucca Mountain.

3. What Is the Standard for Human Intrusion? (§ 197.25)

We adopted NAS's suggested starting point for a human-intrusion scenario. As NAS recommends, our standard requires a single-borehole intrusion scenario based upon Yucca Mountain-specific conditions. The intended purpose of analyzing this scenario ''* * * is to examine the site-and design-related aspects of repository performance under an assumed intrusion scenario to inform a qualitative judgment'' (NAS Report p. 111). The assessment would result in a calculated RMEI dose arriving through the pathway created by the assumed borehole (with no other releases included). Consistent with the NAS Report, we also require ''that the conditional risk as a result of the assumed intrusion scenario should be no greater than the risk levels that would be acceptable for the undisturbed-repository case'' (NAS Report p. 113). We interpreted NAS's term ''undisturbed'' to mean that the Yucca Mountain disposal system is not disturbed by human intrusion but that other processes or events that are likely to occur could disturb the system.

We require that the human-intrusion analysis of disposal system performance use the same methods and RMEI characteristics for the performance assessment as those required for the individual-protection standard, with two exceptions. The first exception is that the human-intrusion analysis would exclude unlikely natural features, events, and processes. The second exception is that the analysis only would address the releases occurring through the borehole (see the *What Are the Requirements for Performance Assessments and Determinations of Compliance?* section earlier in this document).

As noted earlier, our rule uses the same RMEI description for this analysis and scenario as in the assessment for compliance with the individual-protection standard. It is possible that one could postulate that an individual occupies a location above the repository footprint in the future and is impacted by radioactive material brought to the surface during an intrusion event; however, the level of exposure of such an individual would be independent of whether the repository performs acceptably when breached by human intrusion in the manner prescribed in the scenario. Movement of waste to the surface as a result of human intrusion is an acute action. The resulting exposure is a direct consequence of that action. Thus, we interpret the NAS-recommended test of ''resilience'' to be a longer-term test as measured by exposures caused by releases that occur gradually through the borehole, not suddenly as with direct removal. In addition, the effects of direct removal depend on the specific parameters involved with the drilling, not on the disposal system's containment characteristics. We also require that the test of the disposal system's resilience be the dose incurred by the same RMEI used for the individual-protection standard. This approach is consistent with NAS's recommendation.

The DOE must determine when the intrusion would occur based upon the earliest time that current technology and practices could lead to waste package penetration without the drillers noticing the canister penetration. In general, we believe that the time frame for the drilling intrusion should be within the period that a small percentage of the waste packages have failed but before significant migration of radionuclides from the engineered barrier system has occurred because, based upon our understanding of drilling practices, this period would be about the earliest time that a driller would not recognize an impact with a waste package. Our review of information about drilling and experiences of drillers indicates that special efforts, such as changing to a specialized drill bit, would likely be necessary to penetrate intact, non-degraded waste packages of the type DOE plans to use. As stated earlier, DOE would determine the timing as part of the licensing process. The DOE's waste-package performance estimates indicate that a waste package would be recognizable to a driller for at least thousands of years (see Chapter 8 of the BID).

We requested comment regarding how much the human-intrusion analysis will add to protection of public health. Also, given current drilling practice in the vicinity of Yucca Mountain, we sought comment regarding whether our stylized, human-intrusion scenario is reasonable.

Comments on our intrusion scenario focused on a number of concerns. Some comment expressed opinions that the intrusion scenario was unrealistic since actual drilling to tap ground water would more probably be done not from the crest of Yucca Mountain but rather from the adjacent valley floors. Other comments stated that multiple drilling intrusions should be assumed rather than only one, and offered alternative scenarios for intrusion frequency and purposes other than tapping ground water. Some comments acknowledged that the scenario was an adequate test of repository resiliency independent of the question of attempting to predict future activities, and that the difficulty of reliably predicting future activities and human intention were unavoidable, as NAS concluded. Some comment stated that the probability of such an intrusion was so remote as to make the scenario useless for any type of repository analysis, while some comment expressed opinions that the entire question of human intrusion was an implementation issue that should be left to the discretion of NRC. Detailed responses to comments we received on the human intrusion question is found in the Response to Comments document accompanying this rule. Our response to some of the most common issues raised in the comments is given below.

A number of comments criticized the stylized definition of the scenario on the grounds it did not address the reality of the site location and resource potential. A convincing case can be made that intrusion is unlikely because of the low resource potential of the immediate Yucca Mountain area (see BID, Chapter 8), and that actual drilling to tap the underlying ground water would most probably be done in the valleys adjacent to Yucca Mountain, as some comments pointed out. We recognize these conditions and the relatively low resource potential; however, as NAS pointed out, there is no scientifically defensible basis to preclude intrusion (NAS Report p. 111). For this reason, the panel recommended that an intrusion scenario should be assessed separately from the expected repository performance case (NAS Report p. 109), and that a stylized intrusion scenario consisting of one borehole penetration should be considered (NAS Report p. 112) as a test of repository resilience to modest intrusion (p. 113). We agree with the NAS conclusions in this regard. As we have pointed out early in the preamble, releases and consequent exposures can come from either the gradual degradation of the disposal system under expected conditions or through disruption, most notably by human activities. Since intrusion cannot unequivocally be ruled out, and exposures can result from intrusions that release radionuclides, we believe it is necessary to consider human intrusion in the context of a repository standard focused on public health protection, even though the resource potential at the site is low. The nature of the intrusion, how it is analyzed and how it should be evaluated in the regulatory context, are the next issues to consider after the basic need to assess a human intrusion scenario is recognized.

The NAS was very specific in its recommendations about assessing human intrusion. The panel recommended that the intrusion scenarios be considered in the EPA's rulemaking process (NAS Report p. 109) and that ''EPA should specify in its standard a typical intrusion scenario to be analyzed'' (p. 108). The panel recommended that a drill hole penetration through a waste package be assumed, which would make a connection from the repository to the underlying saturated zone (pp. 12 and 111). The panel recommended that a ''consequences-only analysis'' be performed (p. 111) and that the standard ''should require such an analysis'' (p. 111), *i.e.,* the analysis should only deal with the fate of releases through the borehole and the potential doses resulting. The NAS recommended that ''the conditional risk as a result of the assumed intrusion scenario should be no greater than the risk levels * * * acceptable for the undisturbed repository case'' (NAS Report p. 113). We agree with these NAS recommendations and therefore we have constructed the stylized intrusion scenario as described as separate from the individual-protection standard, and imposed a dose limit no greater than the dose limit imposed for the individual-protection standard. We have also followed the NAS recommendation for the time frame for the intrusion (NAS Report p. 112) by linking it to the expected time when the containers first reach a state when a drilling penetration can occur unnoticed by the drillers. This time frame serves as a means of establishing the radionuclide inventory available for release and the transport and dose analysis required by the standard. Comments we received proposing alternative drilling frequencies and intentions, such as deliberately drilling into the repository, did not provide a sufficient rationale to abandon the NAS recommendations and we therefore retained our original framing for the scenario. Additional discussion of the intrusion scenario is to be found in the discussion of comments we received on Question 10 from the proposed rule preamble (see section IV below).

Another line of comment we received stated that framing the intrusion scenario in part, or in any way whatever, should be considered an implementation detail that should be left to NRC. As stated earlier in this document (see section I.A.2, *The Role of 40 CFR part 191 in the Development of 40 CFR part 197*), human intrusion is a process that can contribute to exposures of the public, and it is therefore appropriate to address it in a public health protection standard. In addition, we believe the NAS recommendations as mentioned above were very explicit in stating that human intrusion should be included in the EPA standard and that framing the intrusion scenario should be part of the EPA rulemaking, rather than in implementing regulations. We have followed the NAS recommendations closely, as noted in its comments on our proposed rule. We are also concerned that the implementing authority have some flexibility in implementing the rule and we have framed the standard to allow that flexibility. We have specified in the rule only enough of the details of the scenario to assure it is implemented as we intend. We have in fact not specified enough of the detail to allow an analysis to actually be performed from our description alone. For example, we have not specified the mechanisms by which radionuclides are released from the breached container and make their way down the borehole to the ground water table. Without specifying release and transport mechanisms the analysis cannot be performed. We have left this essential detail for the implementation process. We believe this flexibility is necessary so that the intrusion analyses can consider a range of conditions for the stylized intrusion so it can be an actual test of the repository ''resilience'' for a limited by-passing of the engineered barrier system. Although we have defined the stylized drilling intrusion scenario to closely follow the NAS recommendations, if NRC determines during its implementation efforts that additional intrusion scenarios are necessary to make a licensing decision, NRC can require additional analyses as part of its implementing authority.

We offered for comment two alternatives for the human intrusion standard. The first alternative simply stated that DOE must demonstrate a reasonable expectation that the annual dose incurred by the RMEI would not exceed 15 mrem CEDE as a result of an intrusion event, for 10,000 years after disposal. This parallels the basic individual-protection standard.

The second alternative incorporated our concern that assessments of longer-term performance be made available, if not explicitly used for compliance purposes. Under this alternative, we made a distinction based on how long after disposal the intrusion could occur. If the intrusion were to occur at or earlier than 10,000 years after disposal, DOE must demonstrate a reasonable expectation that annual exposures to the RMEI as a result of the intrusion event would not exceed 15 mrem CEDE. There would be no time limit for this analysis; as our proposal stated, ''[i]f that intrusion can happen within 10,000 years, then DOE must do an analysis which projects the peak dose that would occur as a result of the intrusion within 10,000 years.'' (64 FR 46999, August 27, 1999) However, if the intrusion occurred after 10,000 years, DOE would not have to compare its results against a numerical standard, but would have to include those results in its EIS.

We have selected the second alternative for our final human intrusion standard (§ 197.25). However, we are not requiring that DOE calculate a peak dose beyond 10,000 years for comparison against a numerical standard. If the intrusion event occurs earlier than 10,000 years after disposal, DOE need only compare the dose within 10,000 years to the numerical standard. DOE must include post-10,000-year results in its EIS, no matter when the intrusion occurs. We believe this alternative provides assurance that the full effects of an intrusion event will be assessed, regardless of when it occurs. We also believe that the selected alternative is more consistent with the NAS recommendations that a ''consequence-based'' analysis be performed (NAS Report p. 111).

The time frame for the intrusion has implications on how the projected doses are handled and evaluated. We are distinguishing between intrusion events that occur within 10,000 years and those that occur later than 10,000 years after disposal. In assessing events that occur within 10,000 years, we further distinguish the results based on whether exposures are incurred by the RMEI within the 10,000-year period. We have established the 10,000-year compliance period to reflect past precedents and a realization of the inherent uncertainties in long-term performance projections (see section III.(B)(1)(g)). For intrusion events that occur within 10,000 years and exposures are incurred by the RMEI within 10,000 years, doses are compared against the 15 mrem/yr limit given in the standard as part of the compliance case for licensing. For consistency in the treatment of post-10,000-year dose assessments, we are specifying that, when the dose to the RMEI from human intrusion events occurs after the 10,000 year period, the dose assessments are to be included in the EIS, along with the post-10,000 year performance assessments for the individual protection standard. Regardless of when the intrusion occurs, if exposures are incurred later than 10,000 years, they

are to be included in the EIS up to the time of peak dose.

We formulated the selected alternative to be responsive to the NAS recommendations, in addition to addressing our concern regarding the availability of post-10,000 year analyses. A key factor in evaluating an intrusion scenario is predicting when such an event might take place. However, as NAS concluded, ''there is no scientific basis for estimating the probability of intrusion at far-future times' but that ''we believe it is useful to assume that the intrusion occurs during a period when some of the canisters will have failed * * *'' NAS Report p. 107, 112. Therefore, we specify that DOE must assume the intrusion occurs at ''the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion could occur without recognition by the drillers' (proposed § 197.25). This time would be determined through the licensing process, presumably by assessing the expected performance of the engineered barrier system. This provides DOE the flexibility to demonstrate that its engineered barrier system is sufficiently robust to withstand intrusion for a predictable time period, which then determines the nature of the waste inventory used in the analysis, *i.e.,* the relative proportions of long-and short-lived radionuclides.

4. How Does Our Rule Protect Ground Water? (§ 197.30)

The inclusion of separate ground water protection standards in today's rule continues a longstanding Agency policy of protecting ground water resources and the populations who may use such resources. This policy is articulated in our primary ground water protection strategy document titled ''Protecting the Nation's Ground Water: EPA's Strategy for the 1990's'' (Docket No. A–95–12, Item V-A–13). We designed today's standards to protect the ground water in the vicinity of Yucca Mountain to benefit the current and future residents of the area who could use this ground water as a resource for drinking water and other domestic, agricultural, and commercial purposes. The following sections discuss the Agency's general approach to ground water protection, the NAS comments regarding ground water protection at Yucca Mountain, and some of the legal and regulatory issues associated with our final ground water protection standards.

Policy and Technical Rationales for Separate Ground Water Protection Standards

Our General Approach to Ground Water Protection

Ground water is one of our nation's most precious resources because of its many potential uses. A significant portion (over 50 percent in the early 1990s) of the U.S. population draws on ground water for its potable water supply (''Protecting the Nation's Ground Water: EPA's Strategy for the 1990's,'' Docket No. A–95–12, Item II–A–3). In addition to serving as a source of drinking water, people use ground water for irrigation, stock watering, food preparation, showering, and various industrial processes. When that water is radioactively contaminated, each of these uses completes a radiation exposure pathway for people. Ground water contamination is also of concern to us because of potential adverse impacts upon ecosystems, particularly sensitive or endangered ecosystems (''Protecting the Nation's Ground Water: EPA's Strategy for the 1990's,'' Docket No. A–95–12, Item II–A–3). For these reasons, we believe it is a resource that needs protection. Therefore, we require protection of ground water that is a current or potential source of drinking water to the same level as the maximum contaminant levels (MCLs) for radionuclides that we established previously under the authority of the Safe Drinking Water Act (SDWA).

In January 1990, the Agency completed a strategy to guide future EPA and state activities in ground water protection and cleanup. The Agency-wide Ground Water Task Force developed two papers, which it issued for public review: an EPA Statement of Ground Water Principles and an options paper covering the issues involved in defining the Federal/State relationship in ground water protection. We combined these papers and other Task Force documents into an EPA Ground Water Task Force Report: ''Protecting The Nation's Ground Water: EPA's Strategy for the 1990's'' (''the Strategy,'' EPA 21Z–1020, July 1991 (Docket No. A–95–12, Item II–A–3)). Our approach in this rule is consistent with this strategy.

Key elements of our ground water protection and cleanup strategy are the strategy's overall goals of preventing adverse effects on human health and the environment and protecting the environmental integrity of the nation's ground water resources. Our strategy also recognizes, however, that our efforts to protect ground water must consider the use, value, and vulnerability of the resource, as well as social and economic values. We believe it is important to protect ground water to ensure the preservation of the nation's currently used and potential underground sources of drinking water (USDWs) for present and future generations. Also, we believe it is important to protect ground water to ensure that where it interacts with surface water it does not interfere with the attainment of surface-water-quality standards; these standards are also necessary to protect human health and the integrity of ecosystems. We employ MCLs to protect ground water in numerous regulatory programs. Our regulations pertaining to hazardous-waste disposal (40 CFR part 264); municipal-waste disposal (40 CFR parts 257 and 258); underground injection control (UIC) (40 CFR parts 144, 146, and 148); generic SNF, HLW, and TRU radioactive waste disposal (40 CFR part 191); and uranium mill tailings disposal (40 CFR part 192) reflect this approach. These programs have demonstrated that such protection is scientifically and technically achievable, within the constraints that each program applies (''Progress In Ground Water Protection and Restoration,'' EPA 440/6–90–001, Docket No. A–95–12, Item V–A–6).

Another critical issue in ground water protection is that ground water generally is not directly accessible. Thus, it is much more difficult to monitor and/or decontaminate ground water than is the case with other environmental media (''Ground-Water Protection Strategy'' p. 11, August 1984, Docket No. A–95–12, Item V–A–13). Because of the expenses and difficulties associated with remediation of contaminated ground water, it is prudent and cost-effective to prevent the occurrence of such contamination (*Id.*). It is possible for large amounts of contaminants to enter a body of ground water and remain undetected until the contaminated water reaches a water well or surface-water body. Moreover, ground water contaminants, unlike contaminants in other environmental media such as air or surface water, generally move in plumes with limited mixing or dispersion into uncontaminated water surrounding the plume. These plumes of relatively concentrated contaminants can move slowly through aquifers. They may persist, and thus may make the contaminated resource unusable, for extended periods of time (*Id.*). Because an individual plume may underlie only a very small part of the land surface, it can be difficult to detect by aquifer-wide or regional monitoring. Also, monitoring

is unlikely to occur over greatly extended time periods, during which time an aquifer may become dangerously contaminated (*Id.*). Further, the affected area may become quite large over long time periods. Thus, we believe that it is prudent and responsible to protect ground water resources from contamination through pollution prevention rather than to rely on clean-up of preventable pollution. The pollution prevention approach to protecting ground water resources we are adopting for Yucca Mountain avoids requiring present or future communities to implement expensive clean-up or treatment procedures. This approach also protects individual ground water users. Moreover, absent the protection we have built into the rule, the ground water in aquifers around the repository itself could be subject to expensive clean-up by future generations if releases from the repository contaminate the surrounding ground water to levels that exceed legal limits. A guiding philosophy in radioactive waste management, as well as waste disposal in general, has been to avoid imposing burdens on future generations for clean-up efforts as a result of disposal approaches that would knowingly result in pollution in the future (see, for example, IAEA Safety Series No. 111–F, ''The Principles of Radioactive Waste Management,'' Docket No. A–95–12, Item V–A–10). With respect to radioactive waste disposal, we believe the fundamental principle of inter-generational equity is important. We should not knowingly impose burdens on future generations that we ourselves are not willing to assume. Disposal technologies and regulatory requirements are developed with the aim of preventing pollution from disposal operations, rather than assuming that clean-up in the future is an unavoidable cost of disposal operations today. Designing a disposal system, and imposing performance requirements that avoid polluting resources that reasonably could be used in the future, therefore, is a more appropriate choice than imposing clean-up burdens on future generations. The approach to ground water protection in today's standards is consistent with our overall approach to ground water protection: it prevents the contamination of current and potential sources of drinking water downgradient from Yucca Mountain.

NAS Comments on Ground Water Protection

In its report, NAS clearly identified the ground water pathway as the significant pathways of to the biosphere in the vicinity of Yucca Mountain(NAS Report pp. 52 and 81). The NAS also recognized that ground water modeling for the Yucca Mountain site is complex. Because the modeling for Yucca Mountain involves water movement through pore spaces (the matrix) and fractures in the rocks, as well as the degree of interconnectedness between the water moving in the two pathways, there is uncertainty regarding which model or models to use in the analysis:

> Because of the fractured nature of the tuff aquifer below Yucca Mountain, some uncertainty exists regarding the appropriate mathematical and numerical models required to simulate advective transport * * * [E]ven with residual uncertainties, it should be possible to generate quantitative (possibly bounding) estimates of radionuclide travel times and spatial distributions and concentrations of plumes accessible to a potential critical group. (NAS Report p. 90)

In its report, NAS did not recommend specifically that we include a separate ground water protection provision in our environmental protection standards for Yucca Mountain. Neither, however, did NAS state that we should not include such a provision.

However, in its comments on the proposed rule, NAS specifically addressed our decision to include separate ground water protection standards for the Yucca Mountain site:

> ''(i)n the preamble (to the proposed rule), EPA implies that there is a scientific basis for inclusion of separate ground-water limits in the standards '' for example, EPA provides a detailed analysis of approaches to calculating such limits * * * The (NAS) respectfully disagrees and does not believe that there is a basis in science for establishing such limits for the reasons described above. The (NAS) recognizes EPA has the authority under the Energy Policy Act to establish separate ground-water limits as a matter of policy, but if it does so it should explicitly state the policy decisions embedded in the proposed standard and ask the public to comment on those decisions.
>
> ''If EPA wishes to establish such standards on the basis of science, it must make more cogent scientific arguments to justify the need for this standard''
>
> (NAS Comments, p. 11, Docket No. A–95–12, Item IV–D–31).

EPA's Review of the Ground Water Standards

For the reasons discussed above (see *Our General Approach to Ground Water Protection*), we believe that separate ground water protection standards designed to protect the ground water resource are necessary elements of our Yucca Mountain standards. Our decision to include separate ground water standards is a policy decision that we make pursuant to our statutory authority under the Energy Policy Act. Regarding the protectiveness of the standards, 40 CFR part 197 incorporates the current MCLs. We believe that this approach is necessary to provide stability for NRC and DOE in the licensing process. We based these MCLs on the best scientific knowledge regarding the relationship between radiation exposure and risk that existed in 1975 when they were developed. Scientific understanding has evolved since 1975. We recently concluded a review of the existing MCLs based on a number of factors, including the current understanding of the risk of developing a fatal cancer from exposure to radiation; pertinent risk management factors (such as information about treatment technologies and analytical methods); and applicable statutory requirements. See 65 FR 76708–76753, December 7, 2000. Our analyses indicate that, when the risks associated with the individual radionuclide concentrations derived from the MCLs are calculated in accordance with the latest dosimetry models described in Federal Guidance Report 13, they still generally fall within the Agency's current risk target range for drinking water contaminants of 10^{-4} to 10^{-6} lifetime risk for fatal cancer. Therefore, the MCLs for the radionuclides of concern at Yucca Mountain have not changed.

Our analyses, and those of NAS, indicate that, of all the potential environmental pathways for radionuclides, travel through ground water is the most likely pathway to lead to human exposure to radiation from the Yucca Mountain disposal system (see Chapters 7 and 8 of the BID). The ground water protection standards in this rule protect ground water that is being used or that might be used as drinking water by restricting potential future contamination. Water from the aquifer beneath Yucca Mountain currently serves as a source of drinking water 20 to 30 km south of Yucca Mountain in the communities directly protected by the individual-protection standard. It is also a potential source of drinking water for more distant communities. As noted by NAS, the available ground water supply in the vicinity of Yucca Mountain could sustain a substantially larger population than that presently in the area (NAS Report p. 92).

Technical Approach for Protecting Ground Water at Yucca Mountain

As noted above, NAS asserted in its comments regarding the proposed rule, that we implied that there was a scientific basis for including separate ground water limits in the regulations. The NAS urged us to clearly state the

policy reasons for including such limits. We believe that we clearly articulated in the preamble to the proposed rule that we included a ground water protection provision in the proposal based upon our long-standing policy.

In keeping with the site-specific nature of these standards, we believe that it is appropriate to outline an approach to determining compliance with the ground water standards consistent with the geologic conditions along the anticipated ground water flow path for releases from the repository. The approach that we have devised consists of several components. The first component is to define a ground water resource use common for the current population making use of the ground water along the potential path of releases. The population living downgradient from the repository typically uses the ground water for domestic consumption and for agricultural activities. The dominant agricultural activity is alfalfa cultivation (see Chapter 8 of the BID). The next component of the approach is to define a method for assessing the extent of potential contamination in the aquifer that can be used for comparison against established limits. To address the unique setting of the repository, we are defining a ''representative volume'' of ground water consistent with the uses of the resource (see § 197.31(b)). The third component is to propose alternatives to defining how DOE could use the representative volume in making assessments of potential ground water contamination (see § 197.31). See the *Representative Volume of Ground Water* discussion later in this section for our responses to comments on the representative volume approach.

We proposed to use the MCLs as appropriate standards against which to measure compliance. Comment upon our proposal was mixed. Some comments claimed that we misapplied the MCL concept in the Yucca Mountain standards compared with how we apply MCLs in other situations, such as the use of MCLs to define when drinking water from public water supplies is acceptable. Some comments supported the use of MCLs. Other comments pointed out that the dosimetry system used for the current MCLs has been superceded by newer approaches to assessing dose and risk from ground water use and that we should, therefore, not use the MCLs. A number of comments claimed that the use of separate ground water standards is completely unnecessary because the individual-protection standard includes the drinking water exposure pathway and, therefore, the ground water standards are unnecessary as a health protection measure.

Retaining separate ground water protection standards is consistent with both our national policy to protect ground water resources and with previous Agency regulations for geologic disposal facilities. Our generic standards in 40 CFR part 191, which apply to the same kinds of wastes contemplated for disposal at Yucca Mountain, contain separate ground water protection provisions. We believe that there is no question that separate ground water protection standards are appropriate for deep geologic disposal facilities. We believe that the use of contaminated ground water for purposes that could result in exposures to individuals should be of concern, and that avoiding contaminating useable ground water resources is in the general interest of the public at large. More specifically, contamination of water resources could result in the exposure of individuals well removed from the repository location. Also, if ground water were withdrawn from the repository sub-basin, and transported to other locations to supply water needs, a larger population would be exposed than if the water were used only locally. We commonly apply MCLs to water treatment facilities to assure that exposures to the subsequent users of the water are acceptable and the users are protected. The intent of using the MCLs as a compliance measure for the Yucca Mountain disposal system is to encourage a robust containment and isolation design that will not result in unacceptable contamination during the regulatory time frame, which would require future generations to shoulder the burden of water treatment due to contamination from the wastes. We also included ground water protection requirements in our certification process for WIPP, which is the only deep geologic disposal facility in the country that has actually gone through a regulatory review and approval process. We see no reason why we should not apply the same approach to protection for the Yucca Mountain disposal facility as we afforded to the population around WIPP. In fact, the Yucca Mountain disposal system will be located above aquifers that are the ground water supply for the residents living downgradient from the repository, whereas the aquifers potentially subject to contamination at the WIPP facility are highly saline, non-potable water sources. We recognize that the individual-protection standard includes a drinking water exposure pathway; however, from a policy perspective it is appropriate and consistent for us to provide separate protection for ground water resources in the Yucca Mountain area. As illustrated by the examples above, the protection of ground water resources is in the general interest of the public at large, because it is easily conceivable that uses of the resource could result in exposures well beyond the immediate vicinity of the repository. From a more practical perspective, it would be extremely difficult to predict with any reliability what the total range of potential exposures (and consequent health effects) would be for all possible uses of the resource, because such predictions would involve considerable speculation. It makes more sense to assure the resource is not contaminated in the first place. We are taking the more prudent course of attempting to prevent ground water contamination above the MCLs by imposing separate ground water protection requirements.

The NRC's determination of compliance with the ground-water protection standards will be based largely upon DOE's projections of potential future contaminant concentrations. The DOE will include these projections in the license application it submits to NRC. These projections, by their very nature, inevitably will contain uncertainty. An important cause of uncertainty, as NAS recognized, is the choice of conceptual site models (NAS Report p. 75). The conceptual models used for Yucca Mountain can differ fundamentally. For example, water can be presumed to flow through either pores in the rock or conduits through the rock (such as discrete fractures or a network of fractures that can act as preferential pathways for faster ground water flow), or a combination of the two. To further complicate the situation, any of these flow scenarios, with the possible exception of flow through conduits, can occur at Yucca Mountain whether or not the rock is saturated completely with water.

We believe that adequate data and the choice of models will be critical to any compliance calculation or determination because such data and models are the backbone of the performance assessment used to show compliance. The NAS examined the use of ground-water flow and contaminant-transport models in regulatory applications (''Ground Water Models: Scientific and Regulatory Applications,'' 1990, Docket No. A–95–12, Item V-A–26). In that report, NAS concluded that data inadequacy is an impediment to the use of unsaturated fracture flow models for Yucca Mountain. However, NAS noted that data inadequacy also

was an impediment to using models that assume the pores in the rock are either saturated or unsaturated or that assume flow through fractures that are filled completely with water. However, despite the recognition of the importance of the choice of the site conceptual model, we believe that the need for sufficient quantity, types, and quality of data to adequately analyze the site, because of its hydrogeologic complexity, is even more important. In other words, the complexity of the ground water flow system requires adequate site characterization to justify the choice of the conceptual flow model.

The choice of modeling approaches to address the ground water system in the area of Yucca Mountain, based upon the conceptual model of the site developed from site characterization activities, is important to characterize contaminant migration, particularly the mixing of uncontaminated water with water that has been contaminated with radionuclides released from breached waste packages. The extent of the dilution afforded by mixing contaminated water with other ground water moving through the rocks below the repository but above the water table and the dispersion of the plume of contamination within the saturated zone as the ground water system carries radionuclides downgradient are critical elements of the dose assessments.

At one end of the spectrum of approaches to modeling the Yucca Mountain area's ground water system is the assumption that it is possible to model the system based upon flow through pores over a large area (tens of square kilometers). At the other extreme is the assumption that radionuclides are carried through fast-flow fractures in the unsaturated zone separately from uncontaminated ground water also passing through the repository footprint. Those radionuclides then are assumed to be carried through the saturated zone in fractures that allow little or no dispersion within, or mixing with, uncontaminated water in the saturated zone. This scenario is essentially ''pipe flow'' from the repository to the receptor. Although the flow of ground water at the site is influenced strongly by fractures, which the models should reflect, we believe that it is unreasonable to assume that no mixing with uncontaminated ground water would occur along the radionuclide travel paths because such mixing is a natural process, and would be governed by the degree of interconnection between individual fractures in the rocks. We requested comment upon this approach, including consideration of the practical limitations on characterizing the flow system over several or tens of square kilometers.

Comments varied from statements that we should not allow DOE to consider mixing of contaminated water from the repository with uncontaminated water along potential flow paths, that such dilution is an expected process in the natural system, and that these decisions about the flow system modeling are implementation details which we should defer to NRC. We agree that some degree of mixing along the ground water flow paths is to be expected and, if supported by the hydrogeologic characterization, should be considered in modeling approaches used to make projections of radionuclide migration from repository releases. We also agree that detailed decisions about the approach to modeling the ground water flow system at the site are an implementation concern for NRC. We therefore make no specific requirements in this regard. We do believe that whatever specific modeling approach and attendant assumptions that DOE or NRC make should attempt to model realistically the expected behavior of the actual flow regime downgradient from the repository. Recalling the ''pipe-flow'' scenario described above, we believe it would be highly unrealistic to assume that no mixing of the contaminated water with ground water along the flow path occurs along the distance from the repository to the furthest allowable boundary of the controlled area. Although the actual dispersion effects for the fractured rock geohydrologic setting are anticipated to be small (see Chapter 7 of the BID), ignoring such processes is still inappropriately over-conservative because it would neglect a natural process that is expected to occur. Consistent with this perspective, we specify two alternative methods that DOE could use for determining radionuclide concentrations in the representative volume of ground water. We believe these two alternatives provide appropriate direction for making the compliance determination while allowing ample flexibility for the implementation decisions concerning the details of characterizing the ground water flow and modeling approaches that DOE ultimately must select and defend in the licensing process.

Our intent was to develop ground water protection standards that NRC can reasonably implement. In this regard, NAS indicated that quantitative estimates of ground water contamination should be possible (NAS Report p. 90). We thus require DOE to project the level of radioactive contamination it expects to be in the representative volume of ground water. The representative volume could be calculated to be in a contaminated aquifer that contains less than 10,000 mg/L of TDS and that is downgradient from Yucca Mountain. Through the use of this method, we intend to avoid requiring DOE and NRC to project the contamination in every small, possibly unrepresentative amount of water because we believe that this approach is not scientifically defensible considering the inherent uncertainties in hydrologic data and the limitations of modeling calculations. For example, we do not intend that NRC must consider whether a few gallons of water in a single fracture would exceed the standards. Thus, we allow use of a larger volume of water that must, on average, meet the standards. See below for a discussion of this larger volume, the ''representative volume.''

Because the purpose of the engineered and natural barriers of the geologic repository at Yucca Mountain is to contain radionuclides and minimize their movement into the general environment, we anticipate that radionuclide releases from the repository will not occur for a long period of time. With this assumption in mind, we believe that ground water protection for the Yucca Mountain site should focus upon the protection of the ground water as a resource for future human use. It is the general premise of this rule that the individual-protection standard will adequately protect those few current residents closest to the repository. The intent of the ground water standards is protecting the aquifer as both a resource for current users, and a potential resource for larger numbers of future users either near the repository or farther away in communities comprised of a substantially larger number of people than presently exist in the vicinity of Yucca Mountain. To implement this conceptual approach and develop an approach for compliance determinations, we believe that the ground water standards currently used, the MCLs, should apply to public water supplies downgradient from the repository in aquifers at risk of contamination from repository releases. There is presently no public water supply providing treatment to meet MCLs before the water reaches consumers downgradient of Yucca Mountain, and there is no guarantee that such a system will be in place to protect future users from contamination caused by releases from the disposal system. Applying the MCLs in the ground water assures that the level of protection

currently required for public water supplies elsewhere in the nation also is maintained for future communities using the water supply downgradient from the Yucca Mountain disposal system.

Representative Volume of Ground Water

To implement the standards in § 197.30, we require that DOE use the concept of a ''representative volume'' of ground water. Under this approach, DOE and NRC will project the concentration of radionuclides released from the Yucca Mountain disposal system, for comparison against the MCLs, that would be present in the representative volume in the accessible environment over the 10,000-year period of the standards. The representative volume will be a volume of water projected to supply the annual water demands for defined resource uses. We believe that water demand estimates for calculation of the representative volume should reflect the current resource demands for the general lifestyles and demographics of the area, but not be rigidly constrained by current activities, because potential contamination would occur far into the future. In the area south of Yucca Mountain, people currently use ground water for domestic purposes, commercial agriculture (for example, dairy cattle, feed crops, other crops, and fish farming), residential gardening, commercial, and municipal uses (see Chapter 8 of the BID). The ground water resources, as reflected by estimates of current usage and aquifer yields, indicate that there is theoretically enough water to support a substantially larger population than presently exists at each of the four alternative locations we proposed for the point of compliance (*Id.*). The representative volume approach sets an upper bound on the size of the hypothetical community and its water demand. On the other hand, the SDWA defines the minimum size for a public water system as a system with 15 service connections or that regularly supplies at least 25 people. The SDWA was designed to address, and typically is applied to, situations where contamination can be monitored in the present and where monitoring is done close to the disposal facility rather than many kilometers away. If necessary, corrective actions can be taken if contamination limits are exceeded. In contrast, the geologic disposal application involves potential contamination releases that are expected to occur no sooner than far into the future. It simply is not reasonable to assume that monitoring for the purpose of detecting radionuclide contamination around the repository will be performed continually far into the future. Consequently, it is not prudent to assume that corrective actions would be taken to reduce contamination levels. As noted by NAS, active institutional controls (including active monitoring and maintenance) can play an important role in assuring acceptable repository performance for some initial period, not exceeding a time scale of centuries (NAS Report p. 106). Another approach to protecting the ground water resource into the future is necessary. Projecting repository performance, and consequently assessing potential repository releases to the surrounding ground waters, can only be based upon mathematical modeling of the repository's engineered and natural barrier performance. A method of assessing potential contamination must be developed that involves ground water modeling capabilities. The approach we have developed to assess ground water contamination (described previously) is the use of a representative volume of ground water in modeling calculations.

We believe that, ideally, the representative volume should be fully consistent with the protection objectives of the ground water protection strategy; however, we also recognize the unusual features of these standards. That is, the 10,000-year compliance period introduces unresolvable uncertainties that make this situation fundamentally different from the situations of clean-up or foreseeable, near-term potential contamination to which the SDWA ground water protection strategy ordinarily applies. The size of the area that must be modeled (tens of km^2) around the site and the complexity of the site characteristics introduce fundamental limitations on the size of the water volume that it is possible to model with reasonable confidence. It is Agency policy to protect ground water as a resource and we intend our ground water protection standards to accomplish that policy goal. We intend the representative volume concept we have incorporated into the standards to serve as context for the application of our ground water protection policy to the Yucca Mountain site, which differs from the more common application of the SDWA as described above. The representative volume concept addresses two needs in this respect. First, the size of the representative volume (measured as an annual volume in acre-feet) must be sufficiently large that the uncertainties in projecting site characteristics (such as the hydrologic properties along the flow paths) that control ground water flow are not so great that performing calculations to determine radionuclide concentrations in that volume becomes meaningless from an analytical perspective. That is, we should not expect a higher level of confidence and exactness than the scientific tools and available data are capable of providing. Second, the representative volume should be an appropriate measure of the resource to be protected. From both perspectives, analytical limitations and resource characterization, the representative volume of 1,285 acre-feet that we proposed is the potential choice that could satisfy those needs. As described in the preamble to the proposed rule, we preferred the 1,285 acre-feet alternative because we believed it reflected both perspectives. The major resource use for ground water in the area downgradient from the repository is agriculture, and the most water intensive agricultural activity in the area is alfalfa farming. The 1,285 acre-feet representative volume (including 10 acre-feet for domestic use for the farm community) is the water demand for an average alfalfa farm in the Amargosa Valley area (see Chapter 8 of the BID). From consideration of the inherent limitations of modeling the geohydrologic setting at the site, we believe that approximately a 100 acre-feet representative volume is the smallest volume for which it is possible to perform reasonably reliable calculations (Memo to Docket from Frank Marcinowski, EPA, Docket No. A–95–12, Item II–E–10). The 1,285 acre-feet volume is sufficiently above this limit; therefore, questions about the scientific capabilities of performance modeling to assess radionuclide concentrations in the 1,285 acre-feet volume should not be a concern. While still feasible to model, 120 acre-feet is much closer to the lower limit of defensible modeling, and uncertainties at this volume are potentially unwieldy and overwhelming. We requested comment regarding both our use of a representative volume of ground water and possible alternatives for the size of the representative volume. We based these alternative volumes upon variations in possible lifestyles for residents downgradient from the repository and upon current and near-term projections of population growth and land use in the area.

We specifically requested comment upon whether 1,285 acre-feet is the most appropriate representative volume of ground water, or whether other values within the ranges discussed below are more appropriate. We believe that there may be significant technical, policy, or

practical obstacles with the use of either very small or very large water volumes. Modeling capabilities limit the volumes of ground water for which it is possible to make meaningful and scientifically defensible calculations. At the other extreme, excessively large volumes of water allow artificially high dilution of radionuclide releases, and do not actually simulate the natural process that would occur along the radionuclide ground water travel path from the repository to the compliance point. The selection of the representative volume must consider both modeling limitations and realistic approaches to modeling, and must be both a reasonable representation of the resource to be protected and be possible to implement from a modeling perspective.

Comments on our alternatives for the representative volume size varied from agreement with our preferred volume of 1,285 acre-ft to favoring larger and smaller volumes. We believe that the larger volume mentioned in the proposed rule, 4,000 acre-ft, is not a suitable choice for a number of reasons. This number is an estimate of the perennial yield in the sub-basin containing Yucca Mountain. It is an estimate of the amount of ground water that can be removed annually without seriously depleting the aquifer. Because there are relatively few wells in this sub-basin, the 4,000 acre-ft estimate is not highly reliable and is difficult to justify. This is one reason why we did not select this number. Perhaps more importantly, the perennial yield is not a physical location in the aquifer and the challenge of projecting repository performance is to project the path of potential contamination from the repository. The perennial yield concept is not consistent with the idea that the modeling of potential contamination from the repository should use an actual volume of water, the representative volume, to determine compliance with the standards. Small volumes of ground water would be difficult to model with confidence over the long time frames and distances appropriate for the Yucca Mountain repository. More specifically, we believe it is not possible to model for the 10 acre-ft representative volume (see the Response to Comments document for more detail). Comment on the 120 acre-ft volume was generally that this volume was too small for defensible modeling, which agrees with our assessment. As stated above, we consider 120 acre-ft to be within the range of feasible modeling, but very close to the lower limit of scientifically defensible modeling capabilities. It also does not reflect the typical use of the ground water resource, which is better represented by the agricultural scenario we have selected.

There are a number of fundamental limitations involved in modeling the flow of ground water over long distances that are direct functions of the variability of the hydrologic properties in the aquifers along its dimensions. Averaging assumptions are used in modeling to greater and lesser extents to address these limitations, as a function of the information available regarding the natural variability of hydrologic properties along the flow paths. Our approach to calculating ground water contaminant concentrations (the well capture zone or slice-of-the-plume methods described in § 197.31(b)) centers the representative volume to include the highest concentration portion of the projected plume. If the representative volume is too small, it does not capture a volume large enough to reflect the natural processes that will occur along the flow path. Therefore, the concentrations will be unrealistically high and will not be a reasonable representation of the variations that should be expected in the actual situation. The exact limit on the lowest size of the representative volume adequately reflecting modeling limitations and the data base of hydrologic information about the site is a difficult expert judgment. An exact lower limit is not possible to identify because of the inherent limitations in gathering site data and performing modeling. Our opinion after extensive discussions with qualified experts is that a representative volume on the order of 100 acre-ft or below is the lower limit of modeling capability for the Yucca Mountain ground water flow regime (Yucca Mountain Docket, A–95–12, Item II–E–10).

We based the 1,285 acre-ft representative volume on a hypothetical small farming community of 25 people and an alfalfa farm with 255 acres under cultivation. This approach assumes a small community whose water needs include domestic consumption and an agricultural component comparable to present water usage in the vicinity of the repository. We based the size of the average area of alfalfa cultivation, 255 acres, on site-specific information for the nine existing alfalfa-growing operations in Amargosa Valley in 1998, which ranged in size from about 65 acres to about 800 acres (see Chapter 8 of the BID). Using a water demand for alfalfa farming in Amargosa Valley of 5 acre-feet per acre per year, we estimate that the annual water demand for the average operation is 1,275 acre-ft (Chapter 8 of the BID). An average value of 0.4 acre-ft per person for domestic water use is typical of the area (Chapter 8 of the BID), which for the small community of 25 people would add 10 acre-ft for domestic uses, resulting in a total representative volume of 1,285 acre-ft. Comments on the derivation of the 1,285 acre-ft representative volume supported this size as being technically feasible for modeling and consistent with water resource demands in the area downgradient from the repository.

To implement the standards in § 197.30, we require that DOE use the concept of a ''representative volume'' of ground water. Under this approach, DOE will project the concentration of radionuclides or the resultant doses within a ''representative volume'' of ground water for comparison against the standards. We have selected a value of 3,000 acre-ft/yr as the representative volume. This value is a ''cautious, but reasonable'' figure for protecting users of the ground water downgradient of the repository, as described below. Our approach focuses on the anticipated water use immediately downgradient of the repository, and is closely aligned with the alternatives offered for public comment in our proposed rule.

The preamble to the proposed rule noted that the representative volume should reflect the water usage of a hypothetical community that may exist in the future. The preamble also noted that the water usage should reflect the current general lifestyles and demographics of the area, but not be rigidly constrained by current activities. Using current activities and near-term projections of planned activities in the downgradient area leads us to three types of water demands that can be identified for the downgradient area: Water demand for individual domestic and municipal uses, water demand for commercial/industrial uses, and water demand for agricultural uses.

In deciding how to make this projection, we have concluded in the final rule that our focus in developing an appropriate representative volume should be to consider the spectrum of likely downgradient uses of the ground water resources, as well as the site-specific hydrologic characteristics of the disposal system itself. To avoid speculation on all possible uses of ground water, we have been guided by the premise that current uses in the immediate downgradient area, as well as short-term projections for water uses reflecting growth projections for the area, should be considered in defining an appropriate representative volume for the ground water standard. We believe that the most likely future uses

will in fact take place where they are currently located, since there is no reason to anticipate that they will cease occurring.

Deriving a representative volume involves identifying water demands for the spectrum of likely uses, and includes an examination of projected plume characteristics. This leads us to focus primarily on projected uses occurring downgradient of the repository. As noted above, the current and anticipated water demands downgradient of the repository consist of residential/municipal uses, commercial/industrial uses and agricultural uses.

Currently, the population at the Lathrop Wells is small, about ten people (BID Chapter 8), however near-term projections for the area between Lathrop Wells and the NTS boundary indicate that a science museum and industrial park are under development (Docket No. A–95–12, Items V–A–16, V–A–19). There are also growth projections for the Amargosa Valley area (Docket No. A–95–12, Items V–A–14, 15), leading us to believe that residential/municipal water demands as well as commercial/industrial water demands are likely in the near-term for the area between Lathrop Wells and the NTS boundary.

Projected water demand for the science museum and industrial park are on the order of 100 acre-ft/yr (Docket No. A–95–12, Item V–A–19). Based upon the growth projections, we believe that some residential population growth should be anticipated for the area in addition. In the preamble for the proposed rule, we included a representative volume of 120 acre-ft/yr for a small residential community of approximately 150 persons, which included water uses for individuals and municipal uses. We believe that these water demands should be incorporated into the representative volume, so that the representative volume addresses all potential water users. Limiting the water demand to only one of these uses, we believe, would not be representative of the spectrum of potential users that might be exposed to contaminated water from repository releases. For example, the water demand for the small population at Lathrop Wells would be on the order of less than 10 acre-ft/yr. Our evaluations of representative volume options in the proposed rule (Docket No. A–95–12, Item II–E–10), and the responses we received concerning these options, consistently concluded that such small volumes would not allow credible scientifically defensible projections to be made.

The contribution of agricultural activities to the representative volume can be derived from a consideration of current farming activities in Amargosa Valley. In the Town of Amargosa Valley, agricultural activities consume the largest volumes of ground water, but are largely confined to the location approximately 25–30 km downgradient from the repository location. However, the ground water used for these activities could be contaminated if radionuclide releases from the disposal system were sufficiently high to exceed the limits given in § 197.30. To protect the agricultural resource use, we have used alfalfa farming as a measure of water demand. Although there is no alfalfa farming currently at the compliance location, and no near-term planning for it, our approach to protecting the resource is to include the appropriate water demand in the representative volume at the compliance location. By protecting this volume upgradient of where the actual resource is anticipated to be tapped, we will be protecting the larger actual volume of water that will be used for agricultural purposes downgradient from the compliance location.

As described previously, alfalfa cultivation is the largest water consumer in the agricultural sector, and this activity is anticipated to continue (BID Chapter 8). We have defined an average-sized alfalfa farm based upon current information about acreage under cultivation in Amargosa Valley (BID Chapter 8). We have retained this value to avoid speculation about the future of this particular activity for the following reasons. The demand for alfalfa cultivation to support the local dairy industry in Amargosa Valley is anticipated to be strong for the near-term. The hydrologic basin in which this activity takes place is fully allocated, suggesting that dramatic increases in alfalfa cultivation are unlikely since the water allocations necessary for dramatic increases are not readily available (BID Chapter 8). Therefore, we are using the value of 1,275 acre-feet/yr for an average-sized farm for developing a representative volume figure (this represents the proposed value of 1,285 acre-feet, less the 10 acre-feet assumed for purely domestic use).

The anticipated behavior of the ground-water flow system from Yucca Mountain is important in determining the total contribution of the agricultural water demand to the representative volume, since the width of potential contamination plumes will determine how large a volume of contaminated ground water could be tapped for agricultural purposes and consequently should be protected from unacceptable contamination. Projections of ground water flow, from particle-tracking analyses, have been performed by DOE to determine the path of possible contaminant flow from advective transport (ground water movement) alone (Docket No. A–95–12, Items V–A–5, V–A–27). The particle tracks near the compliance boundary, the southwesternmost corner of NTS (a distance of approximately 18 km from the southern end of the repository), indicate that the width of a potential contamination plume at the compliance location is about 1.8–2.0 kilometers. Farther downgradient, the width of the particle-track ground water travel path widens slightly to a width of between 2 and 3 km. This width does not consider dispersive effects that will occur, which contribute to uncertainty in projecting the actual size of a potential contamination plume. The actual width will be a function of a number of other factors, including the location of failed waste packages over time within the repository and the particular values of dispersion parameters chosen for analyses. Somewhat smaller or larger contamination plume widths could result, but the particle track approach results offer a satisfactory approximation.

The average alfalfa farm we have defined (255 acres in a square shape) is only approximately one kilometer on an edge. Since the exact location of a contamination plume and the variations in radionuclide contaminant concentrations within it are uncertain and cannot be projected with high confidence, we are using two average sized alfalfa farms across the path of the contamination plume to increase confidence that the highest concentration portions of a potential contamination plume will be included in the representative volume, giving a total contribution of 2,550 acre-ft/yr for the agricultural component of the representative volume. Again, we are not assuming the existence of actual farms at the compliance location, but we are assessing the effects of radionuclide contamination on the water volume that they could use at more distant locations.

In total, the contributions to the representative volume consist of the agricultural use water demand for two average size alfalfa farms (2,550 acre-ft/yr), the commercial/industrial water demand for the Lathrop Wells development projections (100 acre-ft/yr), and individual/municipal use water demand for a small community consistent with the near-term growth projections for the area (120 acre-ft/yr). These three components amount to 2,770 acre-ft/yr. As mentioned above,

there is significant uncertainty in the exact location and radionuclide concentrations in potential contamination plumes from the repository, and therefore we cannot be absolutely certain that two average-sized alfalfa farms will cover the total possible width of a contamination plume, but we believe including the water demand from more than two farms would not be entirely justified. Our intent in using the two alfalfa farms (each 1 km in width) is to assure that the highest concentration portion of any contamination plume is tapped by the wells supplying this water demand. We have also modified § 197.31 to allow the use of multiple pumping wells (rather than a single well as described in the proposed rule) to tap the representative volume so that technical limitations on constructing a well withdrawal scenario can be eliminated or minimized, should DOE elect this alternative for calculating radionuclide concentrations in the representative volume.

There is, of course, uncertainty in projecting the size and shape of contamination plumes from the repository as well as projecting human activities into the future, and we have limited this source of uncertainty by considering only near-term projections for growth and development in the area, but some degree of inherent uncertainty will always remain. To address these residual uncertainties in this approach, we increase the representative volume by about 10%, to a total 3,000 acre-ft/yr. We believe that this figure represents a cautious, but reasonable, estimate of the representative volume to protect the ground water resource downgradient of the repository.

We considered an alternative way of evaluating the representative volume concept for application to the ground water protection standards. This approach considers the larger scale ground water flows and uses in the larger basin (Basin 230) which receives outflow from the basin where the repository is located (Basin 227A). The primary water use in this region is in the Amargosa Desert hydrographic basin (Basin 230, see BID Chapter 8), where farming, mining, and other industrial uses occur. This water comes from four basins that have an estimated total water budget of about 43,800 acre-feet, which represents ground water that flows into the Amargosa Desert basin.

The Jackass Flats basin (Basin 227A, which includes Yucca Mountain and the point of compliance location) is one of four basins that flow from the north into the Amargosa Desert basin and provide the ground water that is used for these activities. It is the only one of these basins into which it is reasonable to anticipate that water contaminated by releases from the repository would flow. The Jackass Flats basin contributes about 8,100 acre-feet to the total Amargosa Valley water budget (Table 8–6, BID). Considering the approximate nature of these values, it is reasonable to approximate the contribution of the Jackass Flats to flow into the Amargosa Desert basin and to current water uses at 20%.

Although the Amargosa Desert basin has a water appropriation limit of about 41,093 acre-feet, in 1997, the reported ground water use in the Amargosa Desert basin was about 13,900 acre-feet (BID Chapter 8). That is, the use was less than appropriated. Moreover, actual water use fluctuates significantly, depending primarily on the level of irrigation and mining activities in a given year (BID Chapter 8). To estimate the actual contribution of flow from Jackass Flats, we again refer to the largest water use in the area downgradient from the repository, which is for irrigation, particularly for the cultivation of feed for livestock (primarily alfalfa). There are nine alfalfa farms in the affected area, ranging from approximately 65 to 800 acres (BID Chapter 8). Estimates of acreage under cultivation for feedstock has shown a steady increase from 1994 to 1999 (Table 8–6, BID), with an increase of 50% from 1997 to 1999. Assuming that it also increased by 50%, the 1997 irrigation use of 9,379 acre-feet (Table 8–4, BID) could have increased by approximately 4,700 acre-feet in 1999. This assessment gives a range of water use from approximately 13,900 acre-feet in 1997 to an estimate of 18,600 acre-feet in 1999, placing the corresponding 20% contribution from Jackass Flats in a range of approximately 2,800 to 3,700 acre-feet. From this range of possible values, we again selected 3,000 acre-feet as a value that is conservative (toward the low end of the range), but also makes an allowance for the uncertainty inherent in these estimates.

In summary, both approaches to deriving a ''cautious, but reasonable'' representative volume for the purpose of ground water protection converge on a value of 3,000 acre-ft/yr. Our approach to developing an appropriate representative volume considered the size of the ground water resource and its current and projected uses. Accordingly, we have selected a representative volume of 3,000 acre-feet for this rule. This volume is within the 10 to 4,000 acre-feet range described in the proposed rule and addressed in the public comments and represents a reasonable and site-specific approach to protecting groundwater resources in the vicinity of Yucca Mountain.

Our standards require DOE to assume that the entire representative volume is drawn at the compliance point, that is, 18 km south of the repository, rather than in the Amargosa Valley itself, at 25 to 30 km south of the repository. Therefore, it is adequate not only to protect downgradient uses, but also to protect all of these reasonably projected uses, should the representative volume be withdrawn at the compliance point. As noted above, we believe that given the uncertainties of projecting any particular future and the difficulties of modeling that using the small volumes that would be required by relying only on current projected uses, this is a reasonable approach for determining how ground water should be protected at this particular site.

There are two basic approaches that DOE must choose between for calculating the concentrations of radionuclides in the accessible environment. The DOE may perform this analysis by determining how much contamination is in: (1) A ''well-capture zone;'' or (2) a ''slice of the plume'' (see immediately below for explanations of these approaches). For either approach, the volume of water used in the calculations is equal to the representative volume, *i.e.,* the annual water demand for the future group using the ground water.

The ''well-capture zone'' is the portion of the aquifer containing a volume of water that one or more water supply wells, pumping at a defined rate, withdraw from an aquifer. The dimensions of the well-capture zone are determined by the pumping rate in combination with aquifer characteristics assumed for calculations, such as hydraulic conductivity, gradient, and the screened interval. If DOE uses this approach, it must assume that the:

(1) Wells have characteristics consistent with public water supply wells in Amargosa Valley, for example, well bore size and length of the screened interval;

(2) Screened interval includes the highest concentration in the plume of contamination at the point of compliance; and

(3) Pumping rate is set to produce an annual withdrawal equal to the representative volume.

To include an appropriate measure of conservatism in the compliance calculations for the well-withdrawal approach, for the purpose of the analysis, DOE should assume that pumping wells that tap the highest concentration within the projected plume of contamination would supply

the community water demand. This approach achieves conservatism by requiring that the entire water demand is withdrawn from wells intercepting the center of the plume of contamination so that the highest radionuclide concentrations in the plume are included in the volume used for the compliance calculations. The well-capture zone concept is described in more detail in Bakker and Strack, ''Capture Zone Delineation in Two-Dimensional Groundwater Flow Models,'' (1996) (Docket No. A–95–12, Item V–A–25).

The ''slice of the plume'' is a cross-section of the plume of contamination centered at the point of compliance with sufficient thickness parallel to the prevalent flow of the plume such that it contains the representative volume. If DOE uses this approach, it must:

(1) Propose to NRC, for its approval, where the edge of the plume of contamination occurs, for example, where the concentration of radionuclides reaches 0.1% of the level of the highest concentration at the point of compliance;

(2) Assume that the slice of the plume is perpendicular to the prevalent direction of flow of the aquifer; and

(3) Set the volume of ground water contained within the slice of the plume equal to the representative volume.

Both alternatives require DOE to determine the physical dimensions and orientation of the representative volume during the licensing process, subject to approval by NRC. Factors that would go into determining the orientation of the representative volume would include hydrologic characteristics of the aquifer and the well.

The DOE must demonstrate compliance with the ground water protection standards (§ 197.30) assuming undisturbed performance of the disposal system. The term ''undisturbed performance'' means that human intrusion or the occurrence of unlikely, disruptive, natural processes and events do not disturb the disposal system. The intent of the ground water protection standards is to assess whether the expected performance of the repository system will lead to contamination of the ground water resource above the MCLs. The assessment of resource pollution potential is based upon the engineered design of the repository being sufficiently robust under expected conditions to prevent unacceptable degradation of the ground water resource over time. Disruption of the disposal system is inconsistent with that intent. For this reason we have specified that the ground water standards apply to undisturbed performance. Our approach also recognizes that human behavior is difficult to predict and, if human intrusion occurs, that individuals may be exposed to radiation doses that would be more attributable to human actions than to the quality of repository design (NAS Report p. 11). The requirement that DOE project performance for comparison with the ground water protection standards based on undisturbed-performance scenarios is consistent with our generally applicable standards for SNF, HLW, and TRU radioactive waste in 40 CFR part 191 (58 FR 66402, December 20, 1993; 50 FR 38073 and 38078, September 19, 1985).

We also require that DOE combine certain estimated releases from the Yucca Mountain disposal system with the pre-existing naturally occurring or man-made radionuclides to determine the concentration in the representative volume. This requirement means that DOE must show a reasonable expectation that the releases of radionuclides from radioactive material in the Yucca Mountain disposal system will not cause the projected level of radioactivity in the accessible environment to exceed the limits in § 197.30.

We requested public comment regarding these approaches to ground water protection (*i.e.,* the use of the MCLs, the concept of representative volume and the alternatives for its size and modeling approaches, and calculational approaches for the representative volume application). We also requested comments regarding whether it is desirable and appropriate for us to provide additional detail for the representative volume in the final standards.

Comments generally approved of the idea of providing alternate approaches for determining the concentration of contaminants in the representative volume. Other comments requested additional clarification of the approaches. We developed these approaches to measuring the representative volume in the plume of contamination to provide conservative but reasonable methods of assessing contaminant concentrations. We intend both methods to avoid extreme assumptions that would involve using only the highest potential area of contamination in a contamination plume for comparison against the standards and to allow reasonable consideration of the expected behavior of the flow regime downgradient of the repository. For example, the well capture-zone approach has conservative aspects consistent with our general approach to regulations (a ''cautious, but reasonable'', approach). These aspects include locating the well in the path of the plume and requiring it to have characteristics similar to water supply wells in the area, while also allowing DOE to consider well-bore dilution effects for the water supply wells that realistically would be expected in actual practice. To keep the modeling analyses from becoming too complicated to perform and assess with a reasonable degree of confidence, we specify that DOE use average hydrologic properties to avoid the problem of summing up possibly thousands of individual model runs. We attempt to specify only the most important specifics for the two methods to provide a necessary context to assure the standards are understood as we intend, but still to provide flexibility for NRC in its implementation of the standards. For example, we neither established requirements nor made recommendations regarding models to be used for the plume modeling methods. We left the applicant (DOE) and the implementing authority (NRC) the decision on defining the outer boundary of the contamination plume for this approach.

We received some comment asking for additional clarification concerning the two methods proposed for calculating radionuclide concentrations in a contamination plume, and in response we have made some wording changes in the final standards. We proposed that the screened interval for the withdrawal well be centered in the middle of the contamination plume (proposed § 197.36 (b)(1)(ii)). The intent was to take a conservative approach and assume that the well taps the contamination plume where the highest contamination occurs, rather than being positioned such that only a portion of the lower concentration margin of the plume is included in the representative volume—such a situation would allow a high dilution of the contamination from pumping effects. For a physical situation where the contamination plume is very narrow and located at the top of the aquifer, a physically unrealistic situation could occur if the well's screened interval must be centered on the middle of the contamination plume, *i.e.,* the screened interval could extend into the unsaturated zone above the aquifer making calculations of well capture zones unrealistic since a water supply well would not be deliberately screened in that way. To remove this unrealistic physical situation from consideration, we have modified the language

describing the location of the screened interval to state that it must include the highest concentration portion of the plume, with the intent being that the screened interval should cross as much of the plume diameter as possible so that the conservative approach is taken to calculating radionuclide concentrations in the ground water (final § 197.31(b)(1)(ii)).

Another clarifying change we have made addresses the ''averaging'' of hydrologic properties (§ 197.31(a)(2)) in the downgradient portions of the ground water flow system for the purpose of making calculations for comparison against the ground water protection standards. In the proposed standards, we used the phrase ''average hydrologic characteristics''. We did not intend to imply that a simple arithmetic averaging process would adequately represent the expected variation in hydrologic properties that results from heterogeneity of the flow system at the site (Chapter 7 and Appendix VI of the BID), or that simple arithmetic averaging would be an allowable approach. We believe that a simple arithmetic averaging approach would mask the expected heterogeneity of the flow system. The values for hydrologic properties of the aquifers along the flow path used in calculations should be conservative but reasonable values, which are representative of the expected heterogeneity in the aquifers. Heterogeneity can be accounted for by using spatial statistical averaging methods that can limit extrapolation of data obtained from field measurements in one locale and which are applied to other locations represented by fewer or poorer quality data. By using such techniques, conservative but reasonable data can be developed that adequately represent the heterogeneity of the aquifers for modeling purposes. We have modified the proposed language to reflect that the ''averaged'' values should be conservative but reasonable representations of the aquifer's hydrologic properties.

a. Is the Storage or Disposal of Radioactive Material in the Yucca Mountain Repository Underground Injection? As we discussed in detail in the preamble to the proposed rule, we do not believe that the disposal of radioactive waste in geologic repositories is underground injection for purposes of the SDWA (42 U.S.C. 300f to 300j–26). We received one comment supporting our position and one comment disagreeing with us. See 64 FR 47004–47007 (August 27, 1999) for our comprehensive discussion of this issue.

b. Does the Class-IV Well Ban Apply? We previously indicated that we would review whether the Class-IV injection-well ban would apply to Yucca Mountain. See 64 FR 47006–47007 for our previous discussion of this issue. This rulemaking does not apply the Class-IV injection-well ban to the Yucca Mountain repository. We believe this approach is appropriate in light of the statutory and regulatory provisions, discussed above and in the preamble to the proposed rule, relating to ''underground injection,'' and the differences in the purposes of the Underground Injection Control (UIC) program and the authority delegated to us under the EnPA to establish public health and safety standards for Yucca Mountain.

It is important to emphasize that our decision not to apply the Class-IV well ban to Yucca Mountain does not affect other disposal systems that dispose of hazardous or radioactive waste into or above a formation which, within one-quarter (1/4) mile of the disposal system, contains a USDW. We based today's rule upon site and facility-specific characteristics of the Yucca Mountain disposal system. Today's rule is limited to the Yucca Mountain disposal system.

c. What Ground Water Does Our Rule Protect? Although we find that the Yucca Mountain disposal system is not underground injection as contemplated by the SDWA, we nevertheless consider the ground water protection principles embodied in the SDWA to be important. Therefore, although we do not apply all aspects of the SDWA, we are establishing separate ground water protection standards consistent with the levels of the radionuclide MCLs under the SDWA.

We requested public comment upon our approaches designed to protect ground water resources in the vicinity of the repository. We are concerned that ground water resources in the vicinity of Yucca Mountain receive adequate protection from radioactive contamination. The primary purpose of our ground water standards is to prevent contamination of drinking-water resources. Because the compliance period is 10,000 years after disposal, references to levels of contamination mean those levels projected to exist at specific future times, unless otherwise noted. However, these projections will be made at the time of licensing. This approach prevents placing the burden upon future generations to decontaminate that water by implementing expensive clean-up or treatment procedures. We believe it is prudent to protect drinking water from contamination through prevention rather than to rely upon clean-up afterwards. Absent the protection this prevention provides, future generations might find it necessary to intrude into the sealed repository to remediate radionuclides released from waste packages inside the repository, in addition to treating contaminated ground water along the ground water flow path. Thus, our ground water protection standards stress pollution prevention and provide protection from contamination of sources of drinking water containing up to 10,000 mg/L of total dissolved solids (TDS). We emphasize that the individual-protection standard (§ 197.20) covers all ground water pathways, including drinking water.

The definition of USDW received extensive discussion in the legislative history of the SDWA as reflected in the report of the House Committee on Interstate and Foreign Commerce. To guide the Agency, the Committee Report suggested inclusion of aquifers with fewer than 10,000 mg/L of TDS (H.R. Rep. No. 1185, 93d Cong., 2d Sess. 32, 1974). We have reviewed the current information regarding the use of aquifers for drinking water which contain high levels of TDS. This review found that ground water containing up to 3,000 mg/L of TDS that is treated is in widespread use in the U.S. In the Yucca Mountain vicinity, with few exceptions (one being the Franklin Playa area), ground water contains less than 1,000 mg/L of TDS. Our review also found that ground water elsewhere in the nation, containing as much as 9,000 mg/L of TDS, currently supplies public water systems. Based upon this review and the legislative history of the SDWA, we are proposing that it is reasonable to protect the aquifers potentially affected by releases from the Yucca Mountain disposal system. Therefore, the provisions in § 197.30 would apply to all aquifers, or their portions, containing less than 10,000 mg/L of TDS. We took the definitions associated with § 197.30 directly from our UIC regulations (40 CFR parts 144 through 146).

One comment suggested that we change the definition of ''aquifer'' in the final rule to exclude perched water bodies. A perched water body is a static area of ground water, usually above the water table, that is unconnected to an aquifer but that may infiltrate into an aquifer over time. Based upon our review of this comment, typical definitions of ''aquifer'' in the technical literature, and the available site-specific information regarding the existence of perched water bodies in the vicinity of Yucca Mountain, we decided to make the suggested change. This comment

argued for this change based upon the fact that perched water would be of little value to future residents because few such formations exist in the area and because of abundant water in the aquifer underlying Yucca Mountain. The comment also argued that it would be difficult to make specific predictions regarding the location and characteristics of perched water bodies. Finally, the comment stated it would not be meaningful to attempt to model perched water bodies in any performance assessment. There are only a few, small perched water bodies known to be in the vicinity of Yucca Mountain (see Chapter 7 of the BID). Also, traditional definitions of ''aquifer'' usually do not include perched water bodies (see the Glossary in the BID). Our intent also is to provide protection to water resources of sufficient size to supply water on a continuing basis to targeted uses. Perched water bodies, particularly as they have been observed in the Yucca Mountain area, are relatively small and would not provide a continual source of water to wells used for irrigation or for community water demands. Based upon this information, we believe that it is unnecessary to include these bodies in the definition of ''aquifer'' because it is extremely unlikely that they could serve as a consistent source of drinking water. Therefore, we amended the definition of ''aquifer'' to exclude perched water bodies.

d. How Far Into the Future Must DOE Project Compliance With the Ground Water Standards? We are establishing a 10,000-year compliance period for ground water protection. The primary rationale for establishing a 10,000 year compliance period is that we are significantly concerned about the uncertainty associated with projecting radiation doses over periods longer than 10,000 years. The NAS indicated that beyond 10,000 years it is likely that uncertainty will continue to increase (NAS Report p. 72). As a result, it will become increasingly difficult to discern a difference between the radiation dose from drinking water containing radionuclides (limited by the MCLs) and the total dose arriving through all pathways (limited by the individual-protection standard). Moreover, this approach is consistent with the 10,000-year compliance period we are establishing for the individual-protection standard. Therefore, it provides internal consistency within the standards. It is also consistent with regulations covering long-lived chemically hazardous wastes, which present potential health risks similar to those from radioactive waste, and with the compliance period that we established in our generally applicable radioactive waste disposal standards at 40 CFR part 191.

We requested comment regarding our proposal to impose the ground water protection standards during the first 10,000 years following disposal. Question 14 in the preamble to our proposal specifically asked: ''Is the 10,000-year compliance period for protecting the RMEI and ground water reasonable or should we extend the period to the time of peak dose?'' (64 FR 47010–47011) Comments related to the compliance period applied to both the RMEI and ground water. See the discussion of issues pertaining to both the RMEI and ground water protection in section III.B.1.g (*How Far Into the Future Is It Reasonable to Project Disposal System Performance?*) along with our rationale for adopting a 10,000-year compliance period.

e. How Will DOE Identify Where to Assess Compliance With the Ground Water Standards? To provide a basis for determining projected compliance with the ground water protection standards in § 197.30, it is necessary to establish a geographic location where DOE must project the concentrations of radionuclides in the ground water over the compliance period. This location is the ''point of compliance.''

Our understanding, based upon current knowledge, of the flow of ground water passing under Yucca Mountain is as follows (except where noted otherwise, Chapter 7 and Appendix VI of the BID are the sources for the information in this paragraph). The general direction of ground water movement in the aquifers under Yucca Mountain is south and southeast. The major aquifers along the flow path are in fractured tuff, alluvium, and, underlying both of these, the deeper carbonate rocks. At the edge of the repository, the tuff aquifer is relatively (several hundred meters) thick. The tuff aquifer gets closer to the surface toward its natural discharge points. Potential releases of radionuclides from the engineered barrier system into the surrounding rocks would be highly directional and would reflect the orientation of fractures, rock unit contacts, and ground water flow in the area downgradient from Yucca Mountain. Directly under the repository, we anticipate that any waterborne releases of radionuclides will move through the unsaturated zone and downward into the tuff aquifer, in an easterly direction, between layers of rocks that slant to the east, and downward along generally vertical fractures in the rock units until reaching the saturated zone. The layer of tuff gradually thins proceeding south (downgradient) from Yucca Mountain. As the tuff aquifer thins, the overlying alluvium becomes thicker until the tuff disappears and the water in the aquifer moves into the alluvium to become the ''alluvial aquifer.'' Along the flow path, there might be movement of water between the carbonate aquifer and either the tuff or alluvial aquifers. If there is significant upward flow from the carbonate aquifer, contamination in overlying aquifers could be diluted. It is generally believed, however, that any such flow would not significantly affect the concentration of radionuclides in the overlying aquifers. Conversely, downward movement of ground water from the tuff aquifer could contaminate the carbonate aquifer. Limited information currently available indicates that ground water from the lower carbonate aquifer moves upward into the overlying aquifer; however, this interpretation may not be correct for the entire flow path from beneath the repository to the compliance points southward from Yucca Mountain. Today, most of the water for human use is withdrawn between 20 and 30 km away from the repository footprint (that is, at Lathrop Wells and farther south through the Town of Amargosa Valley) where it is more easily and economically accessed for agricultural use and human consumption. It is likely that the alluvial aquifer is the major source of this water (see Chapter 8 and Appendix V of the BID).

Another basis of our understanding is the historical record of water use in the region. The record indicates that significant, long-term human habitation has not occurred in the southwestern area of NTS, or for that matter anywhere in the vicinity of Yucca Mountain, except where ground water is very easily accessed (for example, in Ash Meadows) (see Chapter 8 of the BID). This observation coincides with current practice whereby the number of wells generally decreases with greater depth to ground water (see Chapter 8 of the BID). The difficulty in accessing ground water in the tuff aquifer in the near vicinity of Yucca Mountain increases because of the rough terrain, the relative degree of fracturing of the tuff formations containing the aquifer, and the great depth to ground water there. As described earlier, the ground water flow from under Yucca Mountain is thought to be generally south and southeast. In those directions, the ground water gets progressively closer to the Earth's surface the farther away it

gets from Yucca Mountain until it is thought to discharge to surface areas 30–40 km away (the southwestern boundary of NTS is about 18 km from Yucca Mountain). This means that access to the upper aquifer is easier at increasing distance from Yucca Mountain.

Because of DOE's ongoing site characterization studies, it is possible that, at the time of licensing, data not now available will reveal important inaccuracies in the preceding conception of the ground water flow under, and downgradient from, Yucca Mountain. We intend compliance with the ground water standards to be assessed where DOE and NRC project the highest concentrations of radionuclides in the representative volume of ground water in the accessible environment. The DOE will determine this location by modeling releases into the saturated zone beneath the repository and the subsequent movement of radionuclides downgradient from Yucca Mountain. After selecting a location, however, DOE must continue to evaluate new information regarding ground water flow. If this new information indicates that the highest concentrations would occur at a location in the accessible environment different from the one selected by DOE and NRC, DOE must propose a new compliance location to NRC. The new location is subject to NRC's approval. The next section discusses the concept of accessible environment as it relates to the controlled area.

f. Where Will Compliance With the Ground Water Standards be Assessed? We presented four alternatives for comment prior to determining the location of the point of compliance. See the preamble to the proposed rule (64 FR 47000–47004) for a detailed discussion of these four alternatives. We asked commenters to address the effectiveness of these or other alternatives for protecting ground water, including consideration of site-specific characteristics and reasonable methods of implementing the alternatives.

After reviewing and evaluating the public comments, various precedents, the EnPA, and NAS's recommendations, we adopted the concept of a controlled area as an essential precondition to assessing compliance with the ground water standards. The ground water standards must be met in the accessible environment where the highest radionuclide concentrations in the representative volume of ground water are projected to occur during the compliance period (10,000 years). The highest projected concentrations will be compared to the regulatory limits established in today's rule. The accessible environment includes any location outside the controlled area. The controlled area may extend no more than 5 km in any direction from the repository footprint, except in the direction of ground water flow. In the direction of ground water flow, the controlled area may extend no farther south than latitude 36°40′13.6661″ North, which corresponds to the latitude of the southwest corner of the Nevada Test Site, as it exists today (Department of Energy submittal of Public Land Order 2568, dated December 19, 1961, Docket No. A–95–12, Item V–A–29). The size of the controlled area may not exceed 300 km^2 (see below for further discussion). Such a limitation is derived by combining the concept of the controlled area as used in 40 CFR part 191 and the requirement for a site-specific standard in the case of Yucca Mountain. If fully employed by DOE, and based on current repository design, the controlled area could extend approximately 18 km in the direction of ground water flow (presently believed to be in a southerly direction) and extend no more than 5 km from the repository footprint in any other direction. Allowing for a nominal repository footprint of a few square kilometers, this results in a rectangle with approximate dimensions of 12 km in an east-west direction and 25 km in a north-south direction, or approximately 300 km^2. The DOE may define the size and shape of the controlled area, but the boundaries cannot extend farther south than latitude 36°40′13.6661″ North in the direction of ground water flow and 5 km in any other direction.

The alternatives for the ground water standards' compliance point presented in the proposed rule correspond to downgradient distances of approximately 5, 18, 20, and 30 km from the repository footprint. The first alternative mirrored the approach used in 40 CFR part 191. This approach incorporates the concept of a controlled area, not to exceed 100 km2, and not to extend more than 5 km in any direction from the repository footprint. The second alternative also incorporated the concept of a controlled area, not to extend more than 5 km in any direction from the footprint, except that DOE could include any contiguous area within the boundary of NTS. The last two alternatives described specific points of compliance at distances of about 20 and 30 km, respectively, from the repository footprint. We also intended these controlled areas and points of compliance to be in the predominant direction of ground water movement from the repository. Consequently, they would reflect the transport path for radionuclides released from the repository. We intended the controlled area options to describe that area of land dedicated to the sole use of serving as the natural barrier portion of the disposal system. Compliance with the standards within the controlled area is not an issue in regulatory decision making because this area is considered part of the overall disposal system and is dedicated to limiting radionuclide transport by means of the natural processes operative within it. Rather, compliance will be judged at the location where projected concentrations are highest and that is no closer to the repository than the edge of the controlled area. The controlled area also serves as the basis for institutional control measures intended to limit access around the repository site. This use of the controlled area, to limit access to the site, is an assurance measure we have left to the discretion of NRC as the implementing authority. Our rule does not require any specific institutional controls to be applied to the controlled area. As part of the licensing process, DOE will propose the specific shape and size of the controlled area. The NRC's proposed rule establishing licensing criteria for the Yucca Mountain facility specifically requires that DOE have permanent control of the land. We anticipate that Congress and the President will authorize a legislative withdrawal of an area within which the site is located. The DOE will determine the extent of land that will be requested of Congress to legislatively withdraw from all other public or private use. For its DEIS (Docket No. A–95–12, Item V–A–4), DOE analyzed a potential land withdrawal area of 600 km2 in the context of site characterization needs. The legislative land withdrawal represents the societal decision on the area of land to be dedicated to the characterization and operation of a disposal system. Although the land withdrawal may exceed 300 km^2, we limit the controlled area to 300 km^2 for the purpose of defining the maximum geological volume which may be included in the disposal system.

We adopted the concept of a controlled area from the generic standards in 40 CFR part 191. Those standards state that the maximum size of the controlled area is 100 km^2 (40 CFR 191.12). After examining the available information concerning the characteristics of the Yucca Mountain site, the current understanding of the expected performance of the disposal

system and the repository engineered barrier system design, and comments received on our proposed approach to ground water protection, we believe that a controlled area of up to 300 km² will adequately address the site-specific conditions at Yucca Mountain.

It would be unreasonable for us to limit DOE's flexibility while site characterization and disposal system design are continuing, or to issue standards that do not account for the uncertainties of ground water flow in the region. Therefore, today's rule provides that the size of the controlled area may be up to 300 km².

In reaching this decision regarding the maximum size of the controlled area, we must draw a contrast between the approach used in 40 CFR part 191 and today's rule. As mentioned earlier, although the WIPP LWA exempted the Yucca Mountain site from licensing under the provisions of 40 CFR part 191, the radiation protection principles in 40 CFR part 191 are still applicable, and we examined them while developing site-specific standards for Yucca Mountain. Throughout this preamble, we note where and why we have carried some of the concepts forward from 40 CFR part 191 if we believe they are necessary for protective standards at Yucca Mountain, and how we have applied them in ways consistent with the site-specific information and understanding of the Yucca Mountain site. Part 191 established a controlled area with a maximum distance in any direction of 5 km from the repository footprint to provide a location for judging compliance with the individual-protection (§ 191.15), ground water protection (§ 191.24), and containment requirements (§ 191.13). Thus, the controlled-area concept in 40 CFR part 191 links a 5 km maximum distance from the repository footprint to a limit on the size of the controlled area (100 km² maximum). Within this area, compliance with the standards is not required because the geologic media therein comprise an essential part of the disposal system. This combination of controlled area and protection of individuals and ground water is appropriate for generic standards because generic standards' provisions must account for the wide variety of possible site conditions (e.g., releases could move in many directions from the repository toward the population), engineered alternatives, and population characteristics. Note that in the 1980s, when 40 CFR part 191 was being developed, DOE was considering nine candidate HLW repository sites. It is also important to recognize that 40 CFR part 191 contained a mechanism for substituting alternative provisions, should they be deemed necessary.

By contrast, 40 CFR part 197 is site-specific. The 1987 NWPA amendments specified Yucca Mountain as the only potential repository site where DOE may conduct characterization activities. Therefore, since passage of the 1987 amendments, the Yucca Mountain site has been under an intense characterization effort. Because of these efforts, a significant amount of information has been generated regarding past, present, and planned population patterns, land use, engineered design, and the hydrogeological characteristics of the host rock and ground water systems at the Yucca Mountain site. Based upon information currently available, it appears that contaminated ground water will flow predominantly in a relatively narrow path from the Yucca Mountain repository. See the Yucca Mountain DEIS, Chapter 3 (DOE/EIS–0250 D, July 1999, Docket No. A–95–12, Item V–A–4, and the Viability Assessment, Docket No. A–95–12, Item V–A–5). In addition to the extensive data base compiled over the years, we have the recommendations of NAS. Significantly, NAS endorsed the use of present knowledge using ''cautious, but reasonable'' assumptions in defining exposure scenarios (NAS Report p. 100).

Concerning the size of the controlled area, though we have a general understanding of the primary direction of ground water flow, our present knowledge continues to evolve through site characterization. As a result, we believe the ''cautious, but reasonable'' approach allows DOE the flexibility to utilize a controlled area up to a maximum of 300 km². Given the uncertainty in ground water flow paths, and the fact that releases could occur anywhere within the repository, we believe it is prudent to ensure that any potential contamination plumes from repository releases are contained within the controlled area, and to ensure that access to and human activity within the area of potential contamination is limited, thereby minimizing the potential for human exposure. We recognize that 300 km² represents an increase in the maximum size of the controlled area, and is larger than we allow in 40 CFR part 191. However, for site-specific reasons, we are increasing the maximum extent of the controlled area only in the direction of ground water flow to no farther south than latitude 36° 40′ 13.6661″ North, while simultaneously limiting the extent of the controlled area in any other direction to no greater than 5 km from the repository footprint.

The size and shape of the controlled area proposed by DOE in the licensing process will depend upon two fundamental elements: (1) The dimensions of the repository layout for the waste inventory and thermal loading, as defined in the final repository design; and (2) uncertainty in ground water flow directions. Both of these aspects are evolving since studies for both site characterization and repository design are still in progress. However, DOE provides some indication in its DEIS of the range of repository-design layouts under various assumed waste inventories and thermal loading alternatives. Combining these repository alternatives in the DEIS, with projected ground water flow paths to the southern most extension of the controlled area at latitude 36° 40′ 13.6661″ North, gives potential controlled area sizes from 100 km² or less to around 300 km². These estimates are based upon the uncertainties in ground water flow directions and repository designs that currently exist. When characterization and design studies are completed, a well-defined controlled area size can be determined during the licensing process, where the uncertainties will be examined in closer detail and a final controlled area size can be determined. However, uncertainties can only be reduced, not eliminated completely, even when site characterization is completed—some residual uncertainty will remain. As stated earlier, we believe it is important to allow flexibility for DOE and NRC at this time to continue the characterization and design work, and allow the licensing process to operate within certain bounds while knowledge of the site is evolving.

In addition to ground water flow path uncertainties, the size and shape of the controlled area also depend upon understanding how and where (in relation to the repository layout) radionuclides could be introduced into the ground water. Failed waste packages during the regulatory time-frame supply the releases carried into the ground water system. While DOE has adopted a new highly engineered waste package anticipated to have containment lifetimes into the tens of thousands of years (TRW Environmental Safety Systems Inc., ''Repository Safety Strategy: Plan to Prepare the Postclosure Safety Case to Support Yucca Mountain Site Recommendation and Licensing Considerations'', TDR–WIS–RL–000001, January 2000, Docket No. A–95–12, Item V–A–24), some small number of waste packages can be anticipated to fail within the regulatory period due to

undetected manufacturing defects. While these failures can be minimized through rigorous quality control efforts during manufacturing, the potential cannot be totally eliminated. The location of such ''premature failures'' in the repository is, however, unpredictable. Other unpredictable disruptive events and processes, such as roof falls that damage waste packages and accelerate corrosion processes, could also result in releases in advance of the anticipated containment lifetime of the containers under expected conditions. The location of these types of waste package failures is also not amenable to reliable prediction. Therefore, releases from such failures could originate anywhere within the repository footprint and would consequently enter the ground water flow envelope at any location. Recognizing this, the process of defining the controlled area would focus upon the two factors discussed above, the repository footprint, which will reflect the waste inventory and the repository design choices, and the envelope of potential ground water flow paths around that footprint. ''Cautious, but reasonable'' assumptions regarding these factors can then be applied to define a controlled area that will include potential releases from a small number of premature waste package failures. A more detailed discussion of the influence of these factors on the potential size of the controlled area may be found in ''Considerations for Defining a Site-Specific Controlled Area for the Yucca Mountain Proposed Repository Location'' (Docket No. A–95–12, Item V–B–7).

Regarding the alternatives we proposed for the ground water point of compliance, none of the information we have reviewed suggests that it is likely or reasonable to assume that year-round residents will live within 5 km of the repository footprint. As discussed in Chapter 8 and Appendix IV of the BID, it would be extremely difficult to farm that close to Yucca Mountain, partly because extracting ground water at that location would be both technically challenging and very expensive for an individual or small group. In addition, much of this area has rough terrain and soils not conducive to farming. Our understanding of projections of future land use does not indicate significant population growth much farther north of Lathrop Wells, *i.e.*, closer than about 18 km from the repository footprint (see Appendix I of the BID, Docket No. A–95–12, Items V–A–14, 15, 16). Given the small likelihood of a year-round resident at 5 km, we chose not to select a distance of 5 km as the limiting distance from the repository footprint to the controlled area boundary.

As one goes farther away from Yucca Mountain in the direction of ground water flow, it is easier to drill for ground water because the water table is closer to the ground surface and the geologic medium changes from tuff to alluvium. In addition, the soil characteristics improve such that agricultural pursuits become more feasible, as evidenced by the widespread agricultural activity in Amargosa Valley some 30 km from Yucca Mountain. There are approximately 10 residents at about 20 km (Lathrop Wells) and hundreds of residents at a distance of 30 km. Current projections of population growth indicate southern Nevada as one of the fastest growing areas in the country (see the Yucca Mountain DEIS, Chapter 3 (DOE/EIS–0250D, July 1999, Docket No. A–95–12, Item V–A–4), and reports prepared for Nye County and Amargosa Valley (Docket No. A–95–12, Items V–A–14, V–A–15, and V–A–16)). We selected latitude 36° 40′ 13.6661″ North, which corresponds to the southwest corner of NTS as it exists today (Docket No. A–95–12, Item V–A–29), as the maximum distance that the controlled area may extend in the direction of ground water flow (south). Given the expected population growth in southern Nevada, it is reasonable to project that some population growth may occur slightly north of Lathrop Wells, although the boundaries of NTS are likely to remain and restrict population expansion in this direction, at least for the near future. As indicated previously, the representative volume of ground water used to demonstrate compliance would reflect a small community including alfalfa cultivation and some residential and light industrial development. At distances progressively closer than 18 km to the repository, it becomes more difficult to drill for water, soil conditions become less favorable for agriculture, and more land is subject to restricted access by the Federal government. We believe, based upon the site-specific information now available, and using cautious, but reasonable assumptions, the southwest corner of NTS, or an equivalent distance in the direction of ground water flow, would be the closest location for a small group to be accessing ground water.

Several comments suggested that we should locate the point of compliance for ground water protection purposes at the boundary of the Yucca Mountain repository footprint. As discussed above, 40 CFR part 191 established the concept that a certain amount of geology surrounding a repository is part of the overall disposal system. The controlled-area concept limited considerations of radiation dose to individuals or contamination of ground water to areas outside of this controlled area. The controlled area in 40 CFR part 191 applies at a distance from the repository, to be determined by the implementing agency, but not to exceed 5 km from the footprint. We continue to support the concept of a compliance point at some distance beyond the repository footprint. In the case of Yucca Mountain, most of the land within the repository footprint is rugged terrain, with extreme depths to ground water, and land unsuitable for agricultural pursuits (see Chapter 8 of the BID). Therefore, we did not choose a compliance point at the edge of the Yucca Mountain repository footprint.

A number of comments suggested we locate the point of compliance, or limit the distance to the boundary of the controlled area, at distances ranging from 5 km to 30 km from the repository footprint. As we indicated previously, we adopted NAS's recommendations to use present knowledge and cautious, but reasonable, assumptions in making regulatory decisions. For the reasons discussed earlier, we did not choose to base compliance with the standards upon a uniform 5 km distance from the repository. Other comments supported placing the compliance point at 30 km, citing the volume of water currently withdrawn at that distance. Indeed, most of the agricultural activities in the vicinity of Yucca Mountain currently take place in this area, and it is home to hundreds of residents. This situation occurs because of the easy accessibility of ground water and soil conditions conducive to a variety of agricultural activities. However, a distance of 30 km would effectively ignore the existence of populations who presently access ground water closer to the repository. Given the prospect of future population growth as well, at distances of about 20 to 30 km from the repository footprint, it would appear more reasonable to protect ground water resources at distances closer than 30 km. Therefore, we did not choose the ''30 km'' alternative as the compliance point.

Distances approximating 20 km appear more reasonable to consider to assess compliance with the ground water standards. As described in Chapter 8 of the BID, no farming currently occurs closer than about 23 km from the repository footprint. Also, as one gets closer than about 18 km to the repository footprint, the depth to water begins to increase dramatically from about 100 m at a distance of 20 km to a few hundred meters at a distance of

5 km. Given the expectation of future population growth and the precious nature of ground water resources in the area, it is reasonable to assume that a small group may annually extract the representative volume of ground water at a distance slightly closer than 20 km, namely, latitude 36° 40′ 13.6661″ North, which corresponds to the southwest corner of NTS as it exists today (Docket No. A–95–12, Item V–A–29). This approach is protective of the ground water resources reasonably anticipated to be accessed in the vicinity of Yucca Mountain. To determine compliance with the ground water standards, DOE must define the controlled area and calculate the concentrations of radionuclides in the representative volume of ground water at a location outside the controlled area where the concentrations are the highest. The controlled area may encompass no more than 300 km^2 and may extend no farther south, in the direction of ground water flow, than latitude 36° 40′ 13.6661″ North, which corresponds to the southwest corner of NTS (Docket No. A–95–12, Item V–A–29). In any other direction, the controlled area may extend no more than 5 km from the repository footprint. We emphasize that these dimensions describe the maximum size of the controlled area. In defining the actual dimensions of the controlled area, DOE may extend the southern boundary of the controlled area as far as latitude 36° 40′ 13.6661″ North, which corresponds to the southwest corner of the NTS (Docket No. A–95–12, Item V–A–29). The DOE could place the boundary of the controlled area anywhere along that distance. Therefore, when we say we did not base compliance with the standard upon a distance of 5 km from the repository footprint, we mean that we neither selected the alternative that would have set the maximum dimension of the controlled area as 5 km in any direction, nor did we identify a specific point of compliance at that distance. The DOE is free to define the controlled area such that it extends only 5 km, or less than 5 km, in any direction (*i.e.*, DOE is not required to extend the controlled area as far as latitude 36° 40′ 13.6661″ North in the direction of ground water flow, or as far as 5 km from the repository footprint in any other direction), and to assess compliance at the location outside the controlled area where concentrations are highest. In the context of waste disposal, the ground water protection standards do not apply inside the controlled area, consistent with the approach in 40 CFR part 191.

IV. Responses to Specific Questions for Public Comment

In addition to requesting comments regarding all aspects of this rulemaking, many of which we have highlighted in the preceding sections of this document, we also requested comment based upon sixteen specific questions. These specific questions appear below, along with brief summaries of the comments we received and our responses to those comments. As with each of the comments discussed elsewhere in this document, we present detailed and comprehensive responses in the accompanying Response to Comments document.

1. The NAS Recommended That We Base The Individual-protection Standard Upon Risk. Consistent With This Recommendation and the Statutory Language of the EnPA, We are Proposing a Standard in Terms of Annual CEDE Incurred by Individuals. Is Our Rationale for This Aspect of Our Proposal Reasonable?

Comments/Our Responses. Many of the comments we received on this issue supported the promulgation of a standard stated in terms of dose. Moreover, section 801(a)(1) of the EnPA specifically provides that EPA shall ''promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases from radioactive materials stored or disposed of in the repository.'' Consistent with the specific statutory language of the EnPA, and the numerous comments supporting the use of a standard stated in terms of dose, we choose to use dose as the form of the individual-protection standard. See section III.B.1.a above for a discussion of our rationales for making this choice. As discussed to some extent in section III.B.1.c, and in more detail in the preamble to the proposed standards (beginning on 64 FR 46984), the primary basis of the dose limit, 150 microsieverts (15 mrem), is the risk of fatal cancer. This level equates to an annual risk of about 8.5 in one million of developing a fatal cancer. This level is within the risk range recommended by NAS. Thus, the 15 mrem CEDE standard is consistent with NAS's recommendation.

2. We Are Proposing an Annual Limit of 150 μSv (15 mrem) CEDE To Protect the RMEI and the General Public From Releases From Waste Disposed of in the Yucca Mountain Disposal System. Is Our Proposed Standard Reasonable To Protect Both Individuals and the General Public?

Comments/Our Responses. As noted in section III.B.1.c above, we are establishing an individual-protection standard for Yucca Mountain that limits the annual radiation dose incurred by the RMEI to 150 μSv (15 mrem) CEDE. See section III.B.1.c for a discussion of the comments regarding the appropriateness of the level of protection. We chose not to adopt a separate limit on radiation releases for the purpose of protecting the general population. There is a full description of our reasoning in section III.B.1.e, above. However, in summary, we based this decision upon several factors. The first factor is NAS's estimate of extremely small doses to be received by individuals resulting from air releases from the Yucca Mountain disposal system. The projected level of these doses is well below the risk level corresponding to our individual-protection standard for Yucca Mountain. It also is well below the level that we have regulated in the past through other regulations. We also declined to establish a negligible incremental dose (NID) level below which doses would not have to be calculated. The second factor is that, based upon current, site-specific conditions near Yucca Mountain, it is unlikely that there will be great dilution and wide dispersal of radionuclides transported in ground water leading to exposure of a large population. This means that the individual-dose standard will suffice to protect the general population. There should be no confusion between establishment of this standard and our establishment of ground water protection standards intended to protect that water for future use. The final factor is that we require all of the pathways, including air and ground water, to be analyzed by DOE and considered by NRC under the individual-protection standard.

Regarding the concepts of negligible incremental dose or risk, though we have recognized elsewhere in this preamble that individual doses from ^{14}C are below the level at which the Agency has historically regulated individual doses, we have declined to establish an NID or NIR level for the reasons enumerated in section III.B.1.e in this preamble. As described by NCRP, the concepts of NID and NIR relate to

individual-dose assessments, not collective dose assessments (Docket A–95–12, Item II–A–8). Therefore, we are not prepared to accept the NIR concept as discussed by NAS.

We also disagree with NAS when it states on page 120 of its report: ''On a collective basis, the risks to future local populations are unknowable.'' There is no question that there will be uncertainty in the estimate; however, even without our recommendation, DOE has already published projected collective doses for Yucca Mountain (see Table 4–34 on p. 4–39 of the Yucca Mountain DEIS, Docket No. A–95–12, Item V–A–4), and is likely to refine these estimates. These estimates could fulfill the NCRP recommendation to use collective dose in a non-regulatory fashion to assess acceptability of a facility (Docket No. A–95–12, Item II–A–8).

Most comments on this issue supported not establishing a collective-dose limit for Yucca Mountain. Two other comments supported our decision to not establish an NIR or NID level. One comment went further by opposing our suggestion that DOE use estimated collective dose to examine design alternatives on the grounds that such action is unnecessary to protect the general public. That comment also stated that we have not provided guidance on what to do with the collective dose estimates and that we are making policy judgments with respect to collective dose estimation. Upon consideration of those comments, we are not recommending that DOE estimate collective dose, primarily because we believe that the individual-protection standard will adequately protect the general population.

3. To Define Who Should Be Protected by the Proposed Individual-protection Standard, We Are Proposing To Use an RMEI as the Representative of the Rural-residential CG. Is Our Approach Reasonable? Would it be More Useful to Have DOE Calculate the Average Dose Occurring Within the Rural-residential CG Rather Than the RMEI Dose?

Comments/Our Responses. We decided that the RMEI in the individual-protection scenario will have a rural-residential lifestyle. A number of comments supported the use of the CG approach. One commenter suggested specifically that it preferred a rural-residential CG to the rural-residential RMEI because it is possible to estimate exposures with much greater confidence. However, in general, we decided to use the rural-residential RMEI rather than a rural-residential CG for the same reasons that we selected RMEI instead of the CG (see section III.B.1.d above, and Docket No. A–95–12, Item V–B–3).

In summary, those reasons are that the RMEI approach:

(1) Is consistent with widespread practice, current and historical, of estimating dose and risk incurred by individuals even when it is impossible to specify or calculate accurately the exposure habits of future members of the population (as in this case where it is necessary to project doses for very long periods);

(2) Is sufficiently conservative and fully protective of the general population;

(3) Provides protection similar to the probabilistic CG approach recommended by NAS for small groups—it has the same goal and purpose as does NAS's recommended probabilistic CG approach, *i.e.*, to protect the vast majority of the public while ensuring that the acceptability of the repository is not driven by unreasonable and extreme cases. It accomplishes this by employing some maximum parameter values and some average parameter values (similar to the NAS's concept of using ''cautious, but reasonable'' assumptions) for the factors most important to estimating the dose to arrive at a conservative, but reasonable, projection of future dose;

(4) Allows the desired degree of conservatism to be built but within the site-specific limits and the framework which we have established.

(5) Is straightforward and relatively simple to understand, and is more appropriate than the probabilistic CG for the situation at Yucca Mountain. It is less speculative to implement than is the probabilistic CG approach given the unique conditions present at Yucca Mountain (and is a cautious, but reasonable, approach). For example, given the known characteristics of ground water flow at Yucca Mountain, locating the receptor in the direct path is more protective, and easier to implement, than assessing an average dose incurred by a randomly-located group of receptors; and,

(6) Has been used by us in the past (whereas we have not used the CG concept).

A number of other comments suggested other groups or individuals that would represent more appropriately the individual to be protected by the individual-protection standard. The suggestions included a fetus, the elderly and infirm, and subsistence farmers. Regarding the various ages and stages of development, the risk value used for the development of cancer is an overall average risk value (see Chapter 6 of the BID for more details) that includes all exposure pathways, both genders, all ages, and most radionuclides. However, it does not cover the ''unborn within the womb'' (see Chapter 6 of the BID). It is thought that the risk per unit dose for prenatal exposures is similar to the average risk per unit dose for postnatal exposures; however, the exposure period is very short compared to the rest of the individual's average lifetime. (See Chapter 6 of the BID for a discussion of cancer risk from *in utero* exposure). Therefore, the risk is proportionately lower and would not have a significant impact upon the overall risk incurred by an individual over a lifetime (see Chapter 6 of the BID). On the other end of the age spectrum, radiation exposure of the elderly at the levels of the individual-protection standard would be less than the overall risk value because they have fewer years to live and, therefore, fewer years for a fatal cancer to develop (see Chapter 6 of the BID). Finally, we did not use subsistence farmers because we do not believe that they are representative of the current lifestyle in Amargosa Valley and that, therefore, they would not constitute a cautious, but reasonable, assumption in relation to the guidance from NAS to use current technology and lifestyle.

4. Is it Reasonable To Use RMEI Parameter Values Based Upon Characteristics of the Population Currently Located in Proximity to Yucca Mountain? Should We Promulgate Specific Parameter Values in Addition To Specifying the Exposure Scenarios?

Comments/Our Responses. The basis of the RMEI dose calculations will be the current population downgradient from Yucca Mountain. This approach is consistent with NAS's recommendation to use current lifestyles to avoid the endless speculation that could result from trying to project future human activities. See section III.B.1.d above for a discussion of this issue. Most commenters supported this approach. However, a number of commenters preferred using a subsistence-farmer lifestyle. We have been unable to identify this lifestyle in the area around the Yucca Mountain site. Also, a few commenters stated that we should take future changes in population, land use, climate, and biota into consideration. Again, with the exception of climate and geologic processes, these factors are subject to the potentially endless speculation of which NAS spoke in its report. We do require DOE and NRC to take climate change and probable variations in geologic conditions into

account because they are factors that scientific study can reasonably bound.

5. Is it Reasonable To Consider, Select, and Hold Constant Today's Known and Assumed Attributes of the Biosphere for Use In Projecting Radiation-related Effects Upon the Public of Releases From the Yucca Mountain Disposal System?

Comments/Our Responses. The comments we received on this question generally favored our position of holding present biosphere conditions constant for the purpose of making performance projections for the disposal system. Some comments pointed to the unexpected dynamic population growth in the southern Nevada area, or stated that current conditions were not a reliable means to predict future conditions. Some comments also pointed out that the target receptor for dose assessments could not be defined independently of assumptions about the biosphere. The tenor of these comments is a general agreement that unreasonably speculative assumptions about biosphere conditions are inappropriate and should be avoided. We agree with this general theme of not making unreasonably speculative assumptions about the future. The NAS also made this point in its recommendations for a reference biosphere. We made some fundamental assumptions in this rule about biosphere conditions to assure that dose assessments for the RMEI are cautious, but reasonable. For example, we require that DOE assume that the RMEI consumes 2 liters/day of drinking water and that DOE base food consumption patterns on surveys of the current residents in the area downgradient from Yucca Mountain. We have left it to NRC to establish other details of the biosphere dose assessment calculations for Yucca Mountain, such as details of pathway-specific dose conversion factors and details necessary for assessing all potential exposure pathways. For additional discussion of these issues, see section III.B.1.f above.

A related aspect of fixing biosphere conditions for dose assessments is the question of potential variations in climate and geologic conditions because these factors play an important part in developing the ground water contaminant concentrations that serve as input for the biosphere dose assessments. We specify that DOE should vary climate and geologic conditions over a reasonable range of values based on an examination of evidence in the geologic record for conditions in the area. The evidence preserved in the relatively recent geologic record provides a means to reasonably bound the range of possible conditions.

6. In Determining the Location of the RMEI, We Considered Three Geographic Subareas and Their Associated Characteristics. Are There Other Reasonable Methods or Factors Which We Could Use to Change the Conclusion We Reached Regarding the Location of the RMEI? For Example, Should We Require an Assumption That for Thousands of Years Into the Future People Will Live Only in the Same Locations That People do Today? Please Include Your Rationale for Your Suggestions

Comments/Our Responses. See section III.B.1.d above for a further discussion of this subject. The many comments we received on this topic suggested a variety of locations, some closer and some farther than Lathrop Wells. A few commenters thought that the Lathrop Wells location is appropriate. However, a number of others stated that the location should be at the repository footprint. One commenter stated that the current farming area in southern Amargosa Valley would be a reasonable location for the RMEI.

Based on further review of site-specific information, we decided to locate the RMEI in the accessible environment above the highest concentration of radionuclides in the plume of contamination. The accessible environment begins at the edge of the controlled area, which may extend no farther south than the southern boundary of NTS (latitude 36° 40′ 13.6661'' North), which is approximately 18 km south of the repository (roughly 2 km closer than the Lathrop Wells location we proposed). We do not believe that an RMEI likely would live much closer to the Yucca Mountain repository because of the increasing depth to ground water and the increasing roughness of the terrain (see Chapter 8 of the BID), although the RMEI would still have rural-residential characteristics described in § 197.21 if the controlled area does not extend as far south as the NTS boundary. In addition, we believe that, at 18 km, a rural resident likely will receive the highest potential doses in the region because, as we have defined the RMEI, the potential dose at this location will be from drinking water, as well as through ingestion of food grown with contaminated ground water. With the RMEI eating food grown using contaminated water, the rural resident at 18 km will have a higher dose than an individual would have living much closer than 18 km because the cost of water likely would preclude a garden and likely would allow only drinking the water and domestic uses (see Chapter 8 of the BID). Likewise, we do not think that hypothesizing that the RMEI lives 30 km away is a cautious or reasonable assumption because: (1) At 30 km, the RMEI likely would use water in which contaminants would be much more diluted; (2) the downgradient residents closest to Yucca Mountain are currently near Lathrop Wells; and (3) Nye County projects short-term (20 years) growth between U.S. Route 95 and the southern boundary of NTS; therefore, population there is not an ephemeral phenomenon. Therefore, placing the RMEI at about 18 km from the repository footprint reflects the location of existing residents, is reasonably conservative, and provides more protection of public health, relative to one commenter's suggested location of 30 km.

There were a few other comments related to the location of the RMEI. For example, one comment suggested that, in selecting the location, we should consider the geology and hydrology of the site rather than choosing the location in advance. Another comment stated that we should base the location of the RMEI on the ability of the RMEI to sustain itself consistent with topography and soil conditions. This comment also stated that depth to ground water should not be a factor because it is impossible to predict either human activities or economic imperatives.

We determined the point of compliance for the individual-protection standard using site-specific factors and NAS's recommendation to use current conditions (NAS Report p. 54). In preparing to propose a location for the RMEI, we collected and evaluated information on the natural geologic and hydrologic features such as topography, geologic structure, aquifer depth, aquifer quality, and the quantity of ground water, that may preclude drilling for water at a specific location (see Chapters 7 and 8, and Appendices IV and VI, of the BID). We also considered geologic conditions, for example, we do not believe that a rural-residential individual would occupy areas much closer to Yucca Mountain because of the increasing rough terrain and the increasing depth to ground water (see Chapter 8 of the BID). With increasing depth to ground water come higher costs: (1) To explore for water; (2) to drill for water; and (3) to pump the water to the surface (see Appendix IV of the BID). Our final standard requires DOE and NRC to consider other, more appropriate locations based upon

potential, future site characterization data. We agree that it is impossible to predict either human activities or economic imperatives. Therefore, we followed NAS's recommendation to use current conditions. This approach allows us to avoid forcing the use of potentially excessive speculative assumptions as the bases of regulatory decisionmaking. It also leads us to consider the depth to ground water as a key factor in determining the location and activities of the RMEI and the current location of people living downgradient from the repository as a reflection of this key factor. We note that some wells providing drinking water are located less than 18 km from the repository footprint; however, those wells have been installed by the Federal government to serve the needs of NTS, and we do not consider them typical of wells that would serve, or be installed by, a rural-residential RMEI. See Chapter 8 (Table 8–5) of the BID.

Finally, one comment stated that the proposed RMEI concept forces DOE to assume the RMEI will withdraw water from the highest concentration within the plume without consideration of the likelihood. According to this comment, forcing such an assumption neglects the low probability that a well will intersect the highest concentration within the plume.

This comment's approach, which would utilize a probabilistic method to determine the radionuclide concentration withdrawn by the RMEI, is similar to one of the example critical group approaches that NAS provided in its report (NAS Report, Appendix C). The NAS's approach would use statistical sampling of various parameters, i.e., considering the likelihood (probability) of various conditions existing, to arrive at a dose for comparison to the standard. However, we did not use this CG approach for the following reasons: (1) There is no relevant experience in applying the probabilistic CG approach, (2) the probabilistic CG approach is very complex and is difficult to implement in a manner that assures it would meet the requirements of defining a CG (i.e., a small group of people who are homogeneous in regards to exposure characteristics, including receiving the highest doses among the general population), and (3) we are concerned that this approach does not appear to identify clearly which individual characteristics describe who is being protected. A probabilistic approach for CG dose assessment could include members that would receive little or no exposure and members that would receive much higher exposures. An RMEI is a more conservative approach, based upon site-specific conditions, because the RMEI serves to represent those individuals in the community who would receive the highest doses, based on cautious, but reasonable, assumptions. Finally, a significant majority of the comments on the NAS Report opposed the use of the probabilistic CG approach. We further believe that prudent public health policy requires that our approach be followed to provide reasonable conservatism. To allow the probability of any particular location being contaminated is not a prudent approach to the ultimate goal of testing acceptable performance.

7. The NAS Suggested Using an NIR Level to Dismiss From Consideration Extremely Low, Incremental Levels of Dose to Individuals When Considering Protection of the General Public. For Somewhat Different Reasons, We are Proposing To Rely Upon the Individual-Protection Standard To Address Protection of the General Population. Is This Approach Reasonable in the Case of Yucca Mountain? If Not, What is an Alternative, Implementable Method To Address Collective Dose and the Protection of the General Population?

Comments/Our Responses. A number of commenters agreed with us that the general population is protected by the individual-protection standard in the site-specific case of Yucca Mountain. Nearly all commenters agreed with our position that a collective-dose limit is unnecessary, again, in the site-specific case of Yucca Mountain. Some commenters stated that EPA should not use an NIR level. One commenter stated that we should not suggest that DOE use a collective-dose estimate in the consideration of design alternatives. We decided not to include a collective-dose limit (see section III.B.1.e), and are not recommending that DOE estimate collective doses.

Regarding the NIR, we decline to set such a level. We agree with NAS's conclusion that " * * * an individual risk standard [will] protect the public health, given the particular characteristics of the site * * *" (NAS Report p. 7). However, we do not accept the remainder of that statement: " * * * provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk" (NAS Report p. 7). We do not agree that collective doses made up of very small individual doses are necessarily negligible. We base our decision on the site-specific characteristics of Yucca Mountain and the levels of individual risk that we previously have used. See the preamble to the proposed rule (64 FR 46991) for the full discussion of our reasoning. We summarize this discussion immediately below.

The NAS based its recommendations upon guidance from NCRP in which NCRP proposed a "Negligible Incremental Dose" level of 1 mrem/yr. Dose levels below 1 mrem/yr would be considered "negligible" for any source or practice (see the NAS Report pp. 59–61 and NCRP Report No. 116, p. 52, Docket No. A–95–12, Item II–A–7). The IAEA has made similar recommendations to define an "exempt practice" (see IAEA Safety Series No. 89, p. 10, Docket No. A–95–12, Item II–A–6). However, it is not clear to us that an exemption for whole sources or practices, such as waste disposal in general, should apply to such specific situations such as gaseous releases from a particular repository because gaseous releases comprise only one category of releases from a repository; other releases are projected via the ground water pathway. In addition, we believe that it is inappropriate to avoid calculating a radiation dose merely because it is small on an individual basis (NCRP Report No. 121, p. 62, Docket No. A–95–12, Item II–A–8). Finally, we do not believe that it is appropriate to apply the NIR concept to population doses (NCRP Report No. 121, p. 62, Docket A–95–12, Item II–A–8). In its Report No. 121, NCRP stated: "[a] concept such as the NID (Negligible Incremental Dose) * * * is not necessarily a legitimate cut-off dose level for the calculation of collective dose. Collective dose addresses societal risk while the NID and related concepts address individual risk" (NCRP Report No. 121, p. 62, Docket No. A–95–12, Item II–A–8).

Despite our belief that it is inappropriate to set an NID level, we acknowledge that the extremely low levels of individual risk from the doses that NAS cited (NAS Report p. 59) (i.e., 0.0003 millirem/yr, for airborne releases) are well below those levels that we have used for other regulations.

In addition, the standards in 40 CFR part 191 provide both release limits, which act as a form of collective dose protection, and individual-protection limits. The release limits act to restrict the potential of dilution being used by disposal system designers to meet the individual-protection limit. However, the potential for large-scale dispersal of radionuclides through ground water and into surface water does not exist at Yucca Mountain.

Therefore, for the reasons enumerated above, we believe that we do not need to include a general population-

protection provision in our Yucca Mountain standards. See the Response to Comments document for a fuller discussion of our responses to comments we received on these issues.

8. Is Our Rationale for the Period of Compliance Reasonable in Light of the NAS Recommendations?

Comments/Our Responses. Public comments supported a compliance period that ranged from 10,000 years to a million years and beyond (i.e., no time limitation). Most of the comments supporting the 10,000-year period were concerned that such a period was the longest time over which it would be possible to obtain meaningful modeling results. Comments noted that just because performance assessment models may be set to run dose calculations to times well in excess of 10,000 years does not necessarily mean that at this time the level of confidence in the reliability of these calculations remains the same. Other comments noted that because of the unprecedented nature of compliance periods exceeding 10,000 years, the greater uncertainties at such times only serves to complicate the licensing process without providing a clearly identifiable increased benefit to public health. A few commenters suggested that because there will likely be radiation doses incurred by individuals beyond 10,000 years, DOE should calculate peak dose, within the time period of geologic stability, and include these doses in the Yucca Mountain Environmental Impact Statement. These comments essentially supported the rationale upon which we based our final rule.

On the other hand, numerous comments suggested that a compliance period of 10,000 years is not reasonable. They urged us to extend the compliance period beyond 10,000 years for a variety of reasons. Foremost among these reasons is that NAS suggested a compliance period that would extend to the time of peak dose or risk, within the period of geologic stability for Yucca Mountain, which it estimated could be as long as one million years. The NAS based its recommendations on scientific considerations. The NAS concluded that it is possible to assess the performance of the repository over times during which the geologic system is ''relatively stable'' or varies in a ''boundable manner'' (NAS Report p. 9). It also noted that policy considerations could act to shorten this period. Other comments suggested that the compliance period of the standard should be comparable to the hazardous lifetime of the materials to be emplaced in the Yucca Mountain repository.

It is unclear whether an assessment of the disposal system based on NAS's recommendation for a standard that would apply to time of peak dose within the period of geologic stability (about one million years) would be meaningful given the expected rigor of a licensing process. As discussed above in section III.B.1.g, we believe that the substantial uncertainty in projecting human radiation exposures over extremely long time periods, such as a million years, is unacceptable. For example, analyzing long-term natural changes would require unprecedented performance assessment modeling of numerous and different climate regimes including several glacial-interglacial cycles. This situation could require the specification of exposure scenarios based on arbitrary assumptions rather than ''cautious, but reasonable'' assumptions rooted in present-day knowledge. In fact, NAS indicated it knew of no scientific basis for identifying such scenarios (NAS Report p. 96). Another concern relates to the possible biosphere conditions and human behavior. Even for a period as ''short'' as 10,000 years, it is necessary to make certain assumptions. For periods on the order of one million years, even natural human evolutionary changes become a consideration. Regulating to such long time periods could become arbitrary. Moreover, NAS based its time-frame recommendation on scientific considerations; however, it recognized that such a decision also has policy aspects (NAS Report p 56). The NAS recognized that the existence of these policy aspects might lead us to select an alternative more consistent with previous Agency policy. Indeed, we considered the longest practical regulatory periods associated with other Agency programs, as well as 40 CFR part 191. We believe the unprecedented nature of a compliance period beyond 10,000 years argues against imposing such a long regulatory period here. Also, numerous international disposal programs use a 10,000-year compliance period. Many of these same programs have committed to consider more qualitative evaluations beyond 10,000 years. (See GAO/RCED–94–172, 1994, Docket No. A–95–12, Item V–A–7. Chapter 3 of the BID also contains information on international programs.) Of course, as knowledge and technical capabilities grow, this situation could change over time.

The hazardous lifetime of radioactive waste is important; however, it is but one of several factors that a regulator must consider in projecting the potential risks from disposal. Indeed, some of the radionuclides expected to be in the waste inventory at Yucca Mountain have half-lives extending to thousands or hundreds of thousands of years (and even a million years or more in a few cases). The ability of the repository to isolate such long-lived materials relates to the retardation characteristics of the whole hydrogeological system within and outside the repository, the effectiveness of engineered barriers, the characteristics and lifestyles associated with the potentially affected population, and numerous other factors in addition to the hazardous lifetime of the materials to be disposed.

With respect to uncertainty in the projected peak dose, one commenter suggested that NRC should deny the license application if modeling results show an uncertainty range of five orders of magnitude above the dose limit in our individual-protection standard. Modeling results, and their associated uncertainties, are but a part of the complete record on which NRC will determine whether the disposal system complies with 40 CFR part 197. For the reasons cited above, we consider a 10,000-year compliance period, and the additional requirement that DOE calculate the peak dose beyond 10,000 years and include this assessment in the Yucca Mountain Environmental Impact Statement, to be the most appropriate approach, given the state of technology and knowledge today. In addition, we require DOE to provide a ''reasonable expectation'' that disposal system performance will meet the standard. Calculation of doses to the RMEI involves projecting doses that are within a reasonably expected range rather than projecting the most extreme case. This approach is in concert with NAS's recommendations to use ''cautious, but reasonable'' assumptions to define who is to be protected (NAS Report pp. 5–6). The degree of uncertainty in the dose assessments considered acceptable in the licensing process is, in our opinion, an implementation decision that should be the responsibility of NRC. We believe that we have provided sufficient detail in the standard to provide the context needed to assure the standard is applied as we intend (see, e.g., our discussions of ''reasonable expectation'' in section III.B.2.c and in the Response to Comments Document that accompanies this rule); however, the final decision regarding the acceptable degree of uncertainty is NRC's responsibility.

For a variety of technical and policy reasons, we believe that a 10,000-year compliance period is meaningful, protective, practical to implement, and will result in a robust disposal system protective for periods beyond 10,000

years. In other programs we have regulated non-radioactive hazardous waste for as long as 10,000 years. Having a 10,000-year compliance period for Yucca Mountain, in conjunction with 40 CFR part 191, ensures that SNF, HLW, and TRU radioactive wastes disposed anywhere in the United States must be regulated for a 10,000-year compliance period.

9. Does Our Requirement That DOE and NRC Determine Compliance with § 197.20 Based Upon the Mean of the Distribution of the Highest Doses Resulting From the Performance Assessment Adequately Address Uncertainties Associated With Performance Assessments?

Comments/Our Responses. Comments on this question ranged from advocating that we should use the maximally exposed individual and ''worst-case'' measures to expressing general agreement with the proposed approach. Some comments stated that any measure applied to the performance assessments should be considered an implementation decision that we should leave to NRC. See the Response to Comments document for additional discussion of comments we received regarding performance assessments.

We specify a compliance measure we believe is reasonable but still conservative: the mean of the distribution of projected doses from DOE's performance assessments. The primary reason we impose this requirement is that it provides a necessary context for implementation of the standard. In addition, we note that it is also consistent with the approach we implemented in certifying WIPP.

We consider it necessary to supply context for understanding the intent of the standard to constrain and direct the otherwise unbounded range of approaches to demonstrating compliance that could be justified in the absence of such context. For example, it would be possible to use only a small number of assessments to demonstrate compliance if the standard specified only an exposure limit. In such a case, the full range of relevant site conditions and processes might not be considered. Further, the analyses and the regulatory decision making might not capture the uncertainties in projecting long-term performance. At the other extreme, without a defined performance measure, endless and exhaustive site characterization studies and analyses could be required. The impetus for these endless and exhaustive studies and analyses would be a perceived need to identify the most extreme ''worst-case'' scenarios (regardless of their actual likelihood of occurring). We believe that a thorough assessment of repository performance expectations should examine the full range of reasonably foreseeable site conditions and relevant processes expected during the regulatory time frame. In making quantitative estimates of repository performance, we believe that unrealistic or extreme situations or assumptions should not dominate estimates of expected performance (see additional discussions about ''reasonable expectation'' in this preamble and the Response to Comments Document). With these considerations in mind, we believe that specifying a performance measure is necessary to supply the proper context for implementing the standard in the regulatory process, as well as providing the applicant (DOE) a focus for its efforts to build the compliance arguments and supporting calculations.

In line with our use of the term ''reasonable expectation,'' the fundamental compliance measure consistent with a literal mathematical interpretation of this term would be the mean value of the distribution of calculated doses. However, as the only alternative for a compliance measure, the mean may in some cases be interpreted too restrictively. In actuality, some situations may result in very high dose estimates for situations that have low probabilities. Simply averaging these ''outliers'' into the distribution of calculated dose estimates can bias the mean levels that may be unrealistically high. Although this is certainly a conservative (and therefore desirable) approach, its effects can be unrealistically conservative (not a desirable situation). The result of overly conservative effects is to drive regulatory decision making on the basis of very low probability and potentially unrealistic situations.

Because of these potential situations, we also proposed using the median of the expected range of calculated values as another interpretation of the ''expected'' situation. The median (reflecting a value exceeded half of the time) may be more conservative if some of the variables involved in the performance calculations have skewed distributions. However, we conclude that, in the case of Yucca Mountain, the mean is an appropriate measure.

By specifying the mean as the performance measure and probability limits for the processes and events to be considered (§ 197.36), and in concert with the intent of our ''reasonable expectation'' approach in general, we have implied that probabilistic approaches for the disposal system performance assessments are expected. The probabilistic approach is well established in DOE's approach to performance projections (see the DEIS and Vol. 3 of the Viability Assessment, Docket No. A–95–12, Items V–A–4 and V–A–5). Based on DOE's past actions and stated intent, we believe that DOE will continue to follow this approach and that, therefore, it is unnecessary for us to specify additional requirements in the standard to assure that DOE continues to follow this approach. We also believe that specifying such requirements could be interpreted to exclude the use of deterministic analyses. These analyses can be useful for carefully focused bounding analyses and sensitivity studies. For these reasons we have specified only the fundamental performance measures to provide the context for understanding, without additional qualifications, the intent of the standard for implementation efforts.

A number of comments stated that, though they agreed with our selection of performance measures, the choice should be left as an implementation detail for NRC. Relative to the implementation question, we believe that specifying the fundamental compliance measure is necessary as a means to supply the proper context for understanding the intent of the rule and for implementation guidance as explained above. We feel this is distinctly different than the implementation responsibility of NRC, as explained below.

We do not believe that setting the fundamental compliance measure intrudes into NRC's implementation authority because the primary task for the regulatory authority is to examine the performance case put forward by DOE to determine ''how much is enough'' in terms of the information and analyses presented (i.e., how will the regulatory authority determine when the performance case has been demonstrated with an acceptable level of confidence). Our standard contains no specific measures for that judgment. We do not specify any confidence measures for such judgments or numerical analyses. Also, we do not prescribe analytical methods that must be used for performance assessments, quality assurance measures that must be applied, statistical measures that define the number or complexity of analyses that should be performed, or any assurance measures in addition to the numerical limits in the standard. We specify only that the mean of the dose assessments must meet the exposure limit. There are many other considerations and decisions that

describe the extent of the assessments or level of rigor necessary to ensure that the mean is a meaningful measure upon which a licensing decision can rest. These considerations and decisions properly belong to the implementing authority. For example, we believe setting a confidence level clearly is an implementation function that should be left to NRC; therefore, we make no requirements in the standard to foreclose NRC's flexibility in setting appropriate confidence measures. In the development of the WIPP certification criteria, where we had both the standard-setting and implementing authority, we did establish a confidence measure (40 CFR 194.55 (d) and (f)) in addition to the basic performance measure. We also included implementation requirements in the WIPP certification criteria, including analytical approaches (§ 194.55(b)), quality assurance requirements (§ 194.22), other assurance requirements (§ 194.41), requirements for modeling techniques and assumptions (§§ 194.23 and 194.25), and use of peer review and expert judgment (§§ 194.26 and 194.27). These requirements go well beyond the simple statement of a compliance measure. We did not incorporate a similar level of detail in the Yucca Mountain standards because we believe we must specify only what is necessary to provide the context for implementation that NRC will execute. We therefore agree with comments that support our choice of the performance measure, but disagree for the reasons described above that this choice is an intrusion into the implementation responsibilities of NRC.

For the WIPP certification, the compliance measure selected for the individual-protection standard was the higher of the mean or median of the calculated distributions of doses from releases (40 CFR 194.55(f)). The mean or median are reasonably conservative measures because they are influenced by high exposure estimates found when analyzing the full range of site conditions and relevant processes, without being geared to exclusively reflect high-end results, as would be the case if we selected as the measure a high-end percentile of the calculated dose distribution (such as the 95th or 99th percentile). Our final rule for Yucca Mountain specifies only that the mean be used, as we believe that it is appropriately conservative in this situation.

10. Is the Single-borehole Scenario a Reasonable Approach To Judge the Resilience of the Yucca Mountain Disposal System Following Human Intrusion? Are There Other Reasonable Scenarios Which We Should Consider, for Example, Using the Probability of Drilling Through a Waste Package Based Upon the Area of the Package Versus the Area of the Repository Footprint or Drilling Through an Emplacement Drift but not Through a Waste Package? Why Would Your Suggested Scenario(s) be a Better Measure of the Resilience of the Yucca Mountain Disposal System than the Proposed Scenario?

Comments/Our Responses. Comments upon this question varied from agreement that the proposed intrusion scenario is an adequate test of repository resiliency to opinions that the analysis of any human-intrusion scenario would be irrelevant to the Yucca Mountain setting. Some comments proposed alternative intrusion scenarios, most commonly the use of multiple drilling intrusions. Some comments also proposed alternative ways of treating the intrusion scenario relative to repository requirements. We also received comments concerning other aspects of the intrusion scenario as well as in response to the specific questions asked above. Discussion on all the issues raised in comments about the human-intrusion scenario appears in the Response to Comments document.

Comments in favor of the intrusion scenario as we framed it in the proposed rule focused upon the difficulties in defending any predictions about the probability of drilling intrusions through the repository and in reliably predicting a hypothetical drilling intrusion in any detail. These comments echoed NAS's conclusions about the reliability of post-closure institutional controls to prevent intrusion, and the inability to make scientifically supportable predictions of the probability of human-intrusion events over the regulatory period (NAS Report pp. 104–109). The NAS reasoned that because it is not possible to reliably eliminate the potential for human intrusion, the only reasonable approach would be to assume an intrusion occurs and assess the consequences on disposal system performance. In this light, NAS recommended that a simple stylized drilling intrusion through the repository to the underlying ground water table be assessed as a test of the resiliency of the disposal system (NAS Report Chap. 4). Because it is impossible to scientifically exclude the potential for an intrusion, and because proposing the nature of an intrusion is at best speculative, these comments agreed that the stylized approach that assumes an intrusion and assesses the consequences is appropriate. We have followed the NAS's recommendations closely in framing the human intrusion standard.

Some comments on the framing of the intrusion scenario proposed that, for various reasons, multiple intrusions should be considered, rather than simply assuming one borehole penetration through the repository. Because of certain site-specific considerations with respect to Yucca Mountain, and in light of the rationale underlying the NAS recommendations, it is not appropriate to modify the scenario to include multiple penetrations through the repository. It is impossible to accurately predict the potential for intrusion in the distant future. Therefore, postulating multiple intrusions is just as speculative as postulating a single intrusion at any given time or specific location over the repository. For this reason, NAS recommended that we develop a stylized intrusion in our rulemaking (NAS Report p. 111). We agree with this recommendation because disruption of the engineered and natural barriers is a means through which radionuclides can escape the repository and be transported to the accessible environment where exposures of individuals can result. Therefore, an evaluation of human-intrusion consequences is appropriate for a repository standard. The NAS also recommended that we define a typical intrusion scenario for analysis (NAS Report p. 108) and recommended a stylized approach to framing the scenario (NAS Report p. 111) and a consequence analysis of the scenario (NAS Report p. 111). The intent of this approach is that the disposal system should be resilient ''to at least moderate inadvertent intrusions'' (NAS Report p. 113). Scenarios ranging from single penetrations to many penetrations through the repository over the regulatory time period would give a very wide range of results—none more or less defensible than any other, making their use in regulatory decision making ambiguous at best. To avoid the speculative aspects of defining intrusion scenarios, we believe the stylized single intrusion recommended by NAS is sufficient and would provide a suitable test of the Yucca Mountain disposal system's performance.

Related comments offered opinions that the prospect of drilling for water resources at the top of Yucca Mountain is not a credible scenario because drilling for water would be more sensible in the adjacent valleys. These comments, however, did not offer

alternatives for the drilling intrusion. Rather, they stated or implied that the intrusion scenario was unnecessary. We agree that drilling for water, or any other mineral resources at Yucca Mountain, is unlikely because of the very limited resource potential at the site (see Chapter 8 of the BID). However, as NAS concluded, it is impossible to totally eliminate the possibility of intrusion (see Chapter 4 of the NAS Report). This question again goes back to the difficulty in making defensible predictions about the probability of human activities over very long time periods and the fact that intrusion is a means through which releases, and consequent exposures, can occur. Therefore, it is necessary to consider the consequences of inadvertent intrusions in a health-based standard. Some comments suggested that there is a strong possibility for deliberate intrusion into the repository to access its contents as possible resources. We believe that there is no useful purpose to assessing the consequences of deliberate intrusions because in that case the intruders would be aware of the risks and consequences and would have decided to assume the risks. This is consistent with NAS's conclusion regarding intentional intrusion (NAS Report p. 114).

Some comments stated that defining the stylized scenario as we did effectively makes the human-intrusion dose assessment results into design constraints for the repository. We do not believe the stylized scenario imposes any design constraints because the waste package penetration is assumed to occur regardless of the particular design chosen for the waste package. Here again, none of these comments proposed alternative scenarios. Rather, they simply questioned the basic relevance of a human intrusion standard. For the reasons mentioned previously, however, we reiterate our belief that an analysis of human-intrusion is necessary, and we also note that NAS (NAS Report p. 108) stated that ''EPA should specify in its standard a typical intrusion scenario...''. We do not believe it should be regarded as a design constraint unless the results of the consequence analyses indicate that the limited breaching of the natural and engineered barriers would result in the standard being exceeded. Even though the probability of drilling intrusions may be low, it is impossible to unequivocally eliminate them. Therefore, we agree with NAS's conclusion that the ''repository should be resilient to at least modest inadvertent intrusions'' (NAS Report p. 113).

11. Is it Reasonable To Expect That the Risks to Future Generations Be No Greater Than the Risks Judged Acceptable Today?

Comments/Our Responses. Comments we received upon this question strongly favored the position that we should not allow greater risks for future generations than what is judged to be acceptable today. Some comments speculated that with advances in medical technology and other areas, the risks assessed today most likely would be less in the future because society would be more effective in mitigating the effects of radiation exposures. Some comments advised that risks from the disposal effort should be reviewed periodically so that decisions could be made about their acceptability at a future date. We believe we have set the standards conservatively, but reasonably, and consistent with our policies for radiation exposure from radioactive waste disposal applications and NAS's recommendations. In this regard, our standards apply over the entire regulatory period of 10,000 years. Our standards thus protect future generations for a very significant time period. In addition, we require DOE to calculate the peak dose to the RMEI beyond 10,000 years. Although our standards do not apply to the results of this calculation, this post-10,000-year analysis will provide more complete information regarding disposal system performance beyond 10,000 years. This approach to the post-10,000-year period is consistent with our understanding of the limits imposed by inherent uncertainties in making such long-term performance projections. The question of periodic re-evaluation of repository performance is an implementation question that should be left to the discretion of NRC.

12. What Approach Is Appropriate for Modeling the Ground Water Flow System Downgradient From Yucca Mountain at the Scale (Many Kilometers to Tens of Kilometers) Necessary for Dose Assessments Given the Inherent Limitations of Characterizing the Area? Is it Reasonable To Assume That There Will be Some Degree of Mixing With Uncontaminated Ground Water Along the Radionuclide Travel Paths From the Repository?

Comments/Our Responses. Comments on this question shared a general theme that we should not be prescriptive in indicating a preference or requirement for any specific modeling approach that should be used. Rather, the bulk of the comments suggested that DOE (the organization responsible for developing the license application) and NRC (the authority responsible for the approval of the disposal facility) should make these decisions. We agree with this general theme; therefore, our rule does not specify that DOE must use a particular modeling approach to demonstrate compliance with the standards. We believe that DOE and NRC should avoid extreme assumptions and approaches and should identify and consider the inherent uncertainties in projecting performance in the regulatory process. More specifically for Yucca Mountain, we believe that it is necessary to avoid extreme modeling approaches. One example of an extreme modeling approach is assuming the transportation of releases from the repository through the natural barriers without mixing with other ground waters. In this regard we retained our recommendation that ''reasonable expectation'' be the standard used to assess repository performance. We have provided detail in the standards only to the extent needed to provide the context necessary to assure that the components of the standards are implemented in the manner we intended when we developed the standards. Ultimately, it is NRC's task to select and apply the appropriate measure to determine compliance with our standards.

13. Which Approach for Protecting Ground Water in the Vicinity of Yucca Mountain is the Most Reasonable? Is There Another Approach Which Would be Preferable and Reasonably Implementable? If so, Please Explain the Approach, Why It Is Preferable, and How It Could Be Implemented

Comments/Our Responses. We received public comments advising us of a variety of approaches towards protecting ground water in the vicinity of Yucca Mountain. Two primary approaches emerged. One group of public comments suggested that an all-pathways, individual-dose standard, with no separate or specific ground water protection provisions, would be fully protective of the public health. On the other hand, a second set of public comments suggested that we should promulgate separate ground-water protection standards applicable to the Yucca Mountain disposal system. The final rule reflects the latter approach.

We believe as a matter of prudent policy that ground water protection standards are neither redundant nor unnecessary because they address specific aspects of natural resource protection not covered by the individual-protection standard. Rather, such standards are complementary to the public health and safety standards applicable to the Yucca Mountain

disposal system. In particular, we consider ground water that is, or that could be, drinking water to be the most valuable ground water resource. We believe that it deserves the highest level of protection. At Yucca Mountain, water from the aquifer beneath the proposed repository currently serves as a source of drinking water in communities 20 to 30 km south of Yucca Mountain. This aquifer has the potential to supply drinking water to a substantially larger population than that presently in the area (NAS Report p. 92).

Over the years, many of our regulatory programs have incorporated the MCLs as an important part of our regulations related to both radioactive and non-radioactive wastes. This approach grew out of the development and implementation of our ground water protection strategy, ''Protecting the Nation's Ground-Water: EPA's Strategy for the 1990s'' (''the Strategy,'' Docket No. A–95–12, Item II-A–3). The use of ground water protection requirements, including the use of MCLs, is reflected in our regulations pertaining to hazardous waste disposal (40 CFR part 264), municipal waste disposal (40 CFR parts 257 and 258), underground injection control (UIC) (40 CFR parts 144, 146, and 148), and uranium mill tailings disposal (40 CFR part 192). We also have incorporated the MCLs into our generally applicable standards for the disposal of SNF, HLW, and TRU radioactive waste (40 CFR part 191). These generic regulations apply to the land disposal of these materials everywhere in the United States except at Yucca Mountain. Extending comparable ground-water protection standards to the proposed Yucca Mountain disposal system will assure reasonable and similar protections wherever the disposal of SNF, HLW, or TRU radioactive waste occurs in this country.

In our response to Question 15, we note our concerns related to adopting only an all-pathways individual-protection standard with no specific ground-water protection provisions. For a more detailed discussion of the issues associated with these two options (all-pathways with and without separate ground water protection), please see the Response to Comments document.

14. Is the 10,000-year Compliance Period for Protecting the RMEI and Ground Water Reasonable or Should we Extend the Period to the Time of Peak Dose? If We Extend it, How Could NRC Reasonably Implement the Standards While Recognizing the Nature of the Uncertainties Involved in Projecting the Performance of the Disposal System Over Potentially Extremely Long Periods?

Comments/Our Responses. As discussed in the response to Question 8 above, comments both supported and questioned our compliance period for the RMEI and ground water protection standards. Commenters who supported the 10,000-year compliance period thought that this time period was ''sufficient'' and that it represented an appropriate balance between long-term coverage and implementability. These commenters agreed with us that, though it is possible to make longer-term calculations, such calculations should be used only for regulatory insight because of the considerable uncertainty involved in making the calculations. These comments support our rationale and choice of a 10,000-year compliance period for protecting the RMEI and ground water.

Numerous commenters suggested that we should extend the compliance period beyond 10,000 years for a variety of reasons. Foremost is that NAS suggested a compliance period extending up to the time of peak dose or risk, within the period of geologic stability for Yucca Mountain (i.e., up to one million years). Other commenters suggested that the compliance period should be comparable to the hazardous lifetime of the materials to be emplaced in the Yucca Mountain repository. As indicated in our response to Question 8 above and in section III.B.1.g, we have significant concerns relating to making meaningful projections of repository performance over the time periods implied by NAS's recommendations. These concerns extend to modeling the time to peak concentration to judge compliance with the ground water standards, which NAS did not explicitly consider. Modeling of exposure scenarios and climatic conditions very different from those experienced over the last 10,000 years, coupled with the potential for human evolutionary changes over such extended time frames, introduces tremendous uncertainties. This situation may result in making arbitrary assumptions in performance assessment modeling, rather than making informed choices based upon cautious, but reasonable, assumptions rooted in present-day knowledge. Regarding the hazardous lifetime of the materials to be emplaced in the Yucca Mountain repository, it is true that there will be radioactive materials remaining after the end of the 10,000-year regulatory period. Nevertheless, the ability of a repository to isolate such long-lived radionuclides depends upon a variety of other factors, including the retardation characteristics of the whole hydrogeological system within and outside of the repository, the effectiveness of the engineered barriers, the characteristics and lifestyles associated with the potentially affected population, as well as the hazardous lifetime of the materials to be emplaced in the repository.

Although we received numerous comments suggesting that 10,000 years was insufficient as a compliance period, we received little in the way of suggestions regarding on how to reasonably implement standards covering these potentially very extended time periods. For example, one commenter suggested that we put the burden on NRC and DOE to develop methods to estimate, with some degree of certainty, the effects after 10,000 years without explaining how the agencies could achieve these results. Please note that NAS specifically addressed this matter (NAS Report, pp. 12–13):

> ''It might be possible that some of the current gaps in scientific knowledge and uncertainties that we have identified might be reduced by future research * * *. Conducting such an appraisal, however, should not be seen as a reason to slow down ongoing research and development programs, including geologic site characterization, or the process of establishing a standard to protect public health.''

We agree with NAS's conclusion. We expect more information will be developed in the time between the promulgation of this rule and the NRC licensing decision to address some of the remaining uncertainties.

15. As Noted by NAS, Some Countries Have Individual-Protection Limits Higher Than We Have Proposed. In Addition, Other Federal Authorities Have suggested Higher Individual-dose limits With No Separate Protection of Ground Water. Therefore, We Request Comment Upon the Use of an Annual CEDE of 250 μSv (25 mrem) With No Separate Ground Water Protection, Including the Consistency of Such a Limit With Our Ground Water Protection Policy

Comments/Our Responses. Our promulgation of only an all-pathways, individual-protection standard, such as 25 mrem/yr, with no ground-water

protection provisions, would provide no assurance that ground water resources will be protected adequately. The separate ground water protection standards in our rule will preserve the integrity of the ground-water resources in the vicinity of Yucca Mountain for present and future generations.

The all-pathways, individual-protection standard is the primary mechanism to protect public health from releases of radioactivity from the Yucca Mountain repository. We believe that an all-pathways limit, supplemented with ground water protection standards, provides complete public health protection and assures that ground water resources will be safe for use by future generations. In addition, the ground water resources in the vicinity of Yucca Mountain support a diverse agricultural community and important ecological systems (e.g., the endangered Devil's Hole pupfish).

We believe that separate ground water protection standards designed to protect the ground water resource in the vicinity of Yucca Mountain is a necessary element of our Yucca Mountain standards. Our decision to include separate ground water protection standards is a policy decision. As explained in section III.B.4 (*How Does Our Rule Protect Ground Water?*), we developed a ground water protection strategy to guide Agency programs in their efforts to prevent adverse effects on human health and the environment and in protecting the environmental integrity of the nation's ground water resources (see ''The Strategy,'' Docket No. A–95–12, Item II-A–3). We have employed ground water protection programs and standards in a variety of regulatory programs for hazardous and non-hazardous waste. We also have incorporated ground water protection standards in our generally applicable disposal regulations for SNF, HLW, and TRU radioactive wastes (see 40 CFR part 191), and implemented them at WIPP. Incorporation of ground water standards in our overall Yucca Mountain standards provides consistency with other Agency programs and assures consistent protection wherever SNF, HLW, and TRU radioactive waste may be disposed of in this country.

We believe that both ground-water protection standards, incorporating the MCLs to protect ground-water resources, and an individual-protection standard, as embodied in an all-pathways standard, are complementary and necessary to provide adequate public health protection and protection of an invaluable national natural resource. For a more detailed discussion of the issues associated with the options for the individual-protection standard and the ground-water protection standards, please see the Response to Comments document.

16. We Are Proposing To Require, in the Individual-Protection Standard, That DOE Must Project the Disposal System's Performance After 10,000 Years. Are the Specified Uses of the Projections Appropriate and Adequate?

Comments/Our Responses. Some comments supporting our 10,000-year compliance period also endorsed the idea that projections of the disposal system's performance beyond 10,000 years would, among other things, be fraught with greater uncertainties and would not necessarily provide greater public health protection. A few comments supported our requirement that DOE project doses beyond 10,000 years and include the results of these projections in the Yucca Mountain EIS. In addition, a few comments suggested that any post-10,000-year projection should serve only to provide ''regulatory insight.''

Comments supporting the use of a post-10,000-year projection for regulatory purposes cited the long-term hazard posed by the wastes planned for Yucca Mountain, the need to protect future generations, and the possibility that the individual doses would exceed our standard in the post-10,000-year time frame. As indicated in our response to Question 8 above, we considered these and other issues in determining that a 10,000-year compliance period is most appropriate. This compliance period is protective, meaningful, and practical to implement. By also including a post-10,000-year dose assessment in the EIS, which provides more complete information on long-term performance, we believe a robust disposal system protective for time periods beyond 10,000 years will result.

In considering the appropriate use of the post-10,000-year dose assessment, we have had to balance these very difficult issues. It is possible to set computer models to run for time periods beyond 10,000 years; however, this approach does not necessarily result in an equal or higher level of confidence that the exposed individuals will be protected. As numerous comments pointed out, it is likely that such results will contain greater uncertainties. We agree with these comments. Yet, despite these greater uncertainties, such assessments can be somewhat informative though not necessarily reliable dose predictions. We note, for example, the considerations that supported Sweden's proposed regulations for SNF and nuclear waste (''The Swedish Radiation Protection Institute's Proposed Regulations Concerning the Final Management of Spent Nuclear Fuel or Nuclear Waste,'' SSI Report 97:07, May 1997, Docket No. A–95–12, Item V–A–11). Regarding long-term assessments (beyond 1,000 years), such studies ''do not mean that the full protective capacity of the repository can be forecasted, e.g., on the scale of a million years into the future. However, studies of such (repository) subsystems can provide valuable information without actually being considered as a prediction of doses to living organisms' (Id. at 11). We believe that requiring DOE to include a post-10,000-year dose assessment in the EIS is an appropriate means to address the issues associated with such long-term impacts. We note that in our proposal, we stated that ''NRC is not to use'' post-10,000-year results in assessing compliance with the individual-protection standard. However, in its comments on our proposal, NRC stated that, if DOE uses post-10,000-year results to bolster its compliance case, ''the Commission should not be constrained from considering such information'' (Docket No. A–95–12, Item II–D–92). We agree. At the very least, more complete information on long-term disposal system performance will be available. In addition, during this time, the repository design will become more clearly defined by new information. For more extensive discussions of this issue, please see our response to Question 8 above and the Response to Comments document.

VI. Severability

As discussed above at Section III.B.1, the purpose of the Individual Protection Standard is to protect public health and safety. As discussed in Section III.B.4, the Ground Water Protection Standard serves two purposes. First, it protects the ground water resource. Second, by protecting that resource, the Ground Water Protection Standard also furthers the goal of public health and safety. Consistent with the recommendations of the National Academy of Sciences, the Individual Protection Standard is adequate in itself to protect public health and safety. In addition, EPA is adopting the Ground Water Protection Standard in its discretion in order to provide additional protection to the vital ground water resource, and in so doing, is also providing an extra measure of public health and safety protection. Thus, notwithstanding that the Individual Protection and Ground Water Standards have coincident

compliance points and, as implemented by NRC, may have other similarities, these two provisions are wholly severable.

VI. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 [58 **Federal Register** 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 the Executive Order. Executive Order 12866 defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

In accordance with the terms of Executive Order 12866, EPA determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of the specific legal mandate of Section 801 of the Energy Policy Act of 1992. Thus, this action was submitted to OMB for review.

In accordance with the terms of Executive Order 12866, EPA determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of the specific legal mandate of Section 801 of the Energy Policy Act of 1992. Thus, this action was submitted to OMB for review. Any changes to the rule that were made in response to OMB suggestions or recommendations have been documented in the public record.

B. Executive Order 12898

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations And Low-income Populations (Environmental Justice),'' directs us to incorporate environmental justice as part of our overall mission by identifying and addressing disproportionately high and adverse human health and environmental effects of programs, policies, and activities upon minority populations and low-income populations.

We find no disproportionate impact in the outcome of this rulemaking. No plan has thus been devised to address a disproportionate impact.

C. Executive Order 13045

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 we have reason to believe may have a disproportionate effect upon children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule upon children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered.

As discussed in the preamble in sections II.C and III.B.1.a, the primary risk factor considered in our risk assessment is incidence of fatal cancer. We have derived a risk value for the onset of fatal cancer that considers children, since it is an overall average risk value (see Chapter 6 of the BID for more details) that includes all ages from birth onward, all exposure pathways, both genders, and most radionuclides. We do note that the risk factor does not include the fetus. However, we believe that the risk of fatal cancer per unit dose incurred by the unborn is similar to that for those who have been born, but the exposure period is very short compared to the rest of the individual's average lifetime, so the risk of fatal cancer to the unborn is proportionately lower and does not have a significant impact upon the overall risk of fatal cancer incurred by an individual over a lifetime. (See Chapter 6 of the BID for more discussion of the risk of fatal cancer resulting from in utero exposure.)

Therefore, this final rule is not subject to Executive Order 13045 because we do not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

D. Executive Order 13084

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084.

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' we 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 upon those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our 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 us 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.''

The radiological protection standards promulgated by today's rule are applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. Therefore, this rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any direct compliance costs on such communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Nonetheless, in developing its proposed rule EPA held public meetings in Nevada and Washington, D.C. during which comment was received from and discussions were had with representatives from the State of Nevada and various county officials. EPA also had informal meetings with State and local officials to apprise them of the status of the rulemaking.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

In our proposal, we requested public comment on potentially applicable voluntary consensus standards that would be appropriate for inclusion in the Yucca Mountain rule. We received no comments on this aspect of the rule. The closest analogy to consensus standards for radioactive waste disposal facilities are our regulations at 40 CFR part 191. As discussed above in this preamble, Congress expressly prohibited the application of the 40 CFR part 191 standards to the Yucca Mountain disposal facility, and, therefore, the standards promulgated today are site-specific standards developed solely for application to the Yucca Mountain disposal facility.

G. Paperwork Reduction Act

We have determined that this rule contains no information collection requirements within the scope of the Paperwork Reduction Act, 42 U.S.C. 3501–20.

H. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the right or obligations of non-agency parties. (5 U.S.C. 804(3)) The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions upon state, local, and tribal governments and the private sector. Under section 202 of UMRA, we 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 to the private sector, of $100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective, or least burdensome if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before we establish any regulatory requirements that significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of 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 into the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. The final rule promulgates radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

We have not prepared a Statement of Energy Effects because this rule is not a significant energy action, as defined in Executive Order 13211. While this rule is a significant regulatory action under Executive Order 12866, we have determined that it is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 40 CFR Part 197

Environmental protection, High-level radioactive waste Nuclear energy, Radiation protection, Radionuclides, Spent nuclear fuel, Uranium, Waste treatment and disposal.

Dated: June 5, 2001.

Christine Todd Whitman,

Administrator.

The Environmental Protection Agency is adding a new part 197 to Subchapter

F of Chapter I, title 40 of the Code of Federal Regulations, as follows:

Subchapter F—Radiation Protection Programs

PART 197—PUBLIC HEALTH AND ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR YUCCA MOUNTAIN, NEVADA

Subpart A—Public Health and Environmental Standards for Storage

Sec.
197.1 What does subpart A cover?
197.2 What definitions apply in subpart A?
197.3 How is subpart A implemented?
197.4 What standard must DOE meet?
197.5 When will this part take effect?

Subpart B—Public Health and Environmental Standards for Disposal

197.11 What does subpart B cover?
197.12 What definitions apply in subpart B?
197.13 How is subpart B implemented?
197.14 What is a reasonable expectation?
197.15 How must DOE take into account the changes that will occur during the 10,000 years after disposal?

Individual-Protection Standard

197.20 What standard must DOE meet?
197.21 Who is the reasonably maximally exposed individual?

Human-Intrusion Standard 197.25 What standard must DOE meet?

197.26 What are the circumstances of the human intrusion?

Ground Water Protection Standards

197.30 What standards must DOE meet?
197.31 What is a representative volume?

Additional Provisions

197.35 What other projections must DOE make?
197.36 Are there limits on what DOE must consider in the performance assessments?
197.37 Can EPA amend this rule?
197.38 Are The Individual Protection and Ground Water Protection Standards Severable?

Authority: Sec. 801, Pub. L. 102–486, 106 Stat. 2921, 42 U.S.C. 10141 n.

Subpart A—Public Health and Environmental Standards for Storage

§ 197.1 What does subpart A cover?

This subpart covers the storage of radioactive material by DOE in the Yucca Mountain repository and on the Yucca Mountain site.

§ 197.2 What definitions apply in subpart A?

Annual committed effective dose equivalent means the effective dose equivalent received by an individual in one year from radiation sources external to the individual plus the committed effective dose equivalent.

Committed effective dose equivalent means the effective dose equivalent received over a period of time (e.g., 30 years,), as determined by NRC, by an individual from radionuclides internal to the individual following a one-year intake of those radionuclides.

DOE means the Department of Energy.

Effective dose equivalent means the sum of the products of the dose equivalent received by specified tissues following an exposure of, or an intake of radionuclides into, specified tissues of the body, multiplied by appropriate weighting factors.

EPA means the Environmental Protection Agency.

General environment means everywhere outside the Yucca Mountain site, the Nellis Air Force Range, and the Nevada Test Site.

High-level radioactive waste means:

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(2) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

Member of the public means anyone who is not a radiation worker for purposes of worker protection.

NRC means the Nuclear Regulatory Commission.

Radioactive material means matter composed of or containing radionuclides subject to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 *et seq.*). Radioactive material includes, but is not limited to, high-level radioactive waste and spent nuclear fuel.

Spent nuclear fuel means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

Storage means retention (and any associated activity, operation, or process necessary to carry out successful retention) of radioactive material with the intent or capability to readily access or retrieve such material.

Yucca Mountain repository means the excavated portion of the facility constructed underground within the Yucca Mountain site.

Yucca Mountain site means:

(1) The site recommended by the Secretary of DOE to the President under section 112(b)(1)(B) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)(1)(B)) on May 27, 1986; or

(2) The area under the control of DOE for the use of Yucca Mountain activities at the time of licensing, if the site designated under the Nuclear Waste Policy Act is amended by Congress prior to the time of licensing.

§ 197.3 How is subpart A implemented?

The NRC implements this subpart A. The DOE must demonstrate to NRC that normal operations at the Yucca Mountain site will and do occur in compliance with this subpart before NRC may grant or continue a license for DOE to receive and possess radioactive material within the Yucca Mountain site.

§ 197.4 What standard must DOE meet?

The DOE must ensure that no member of the public in the general environment receives more than an annual committed effective dose equivalent of 150 microsieverts (15 millirems) from the combination of:

(a) Management and storage (as defined in 40 CFR 191.2) of radioactive material that:

(1) Is subject to 40 CFR 191.3(a); and

(2) Occurs outside of the Yucca Mountain repository but within the Yucca Mountain site; and

(b) Storage (as defined in § 197.2) of radioactive material inside the Yucca Mountain repository.

§ 197.5 When will this part take effect?

The standards in this part take effect on July 13, 2001.

Subpart B—Public Health and Environmental Standards for Disposal

§ 197.11 What does subpart B cover?

This subpart covers the disposal of radioactive material in the Yucca Mountain repository by DOE.

§ 197.12 What definitions apply in subpart B?

All definitions in subpart A of this part and the following:

Accessible environment means any point outside of the controlled area, including:

(1) The atmosphere (including the atmosphere above the surface area of the controlled area);

(2) Land surfaces;

(3) Surface waters;

(4) Oceans; and

(5) The lithosphere.

Aquifer means a water-bearing underground geological formation, group of formations, or part of a formation (excluding perched water bodies) that can yield a significant amount of ground water to a well or spring.

Barrier means any material, structure, or feature that, for a period to be determined by NRC, prevents or substantially reduces the rate of

movement of water or radionuclides from the Yucca Mountain repository to the accessible environment, or prevents the release or substantially reduces the release rate of radionuclides from the waste. For example, a barrier may be a geologic feature, an engineered structure, a canister, a waste form with physical and chemical characteristics that significantly decrease the mobility of radionuclides, or a material placed over and around the waste, provided that the material substantially delays movement of water or radionuclides.

Controlled area means:

(1) The surface area, identified by passive institutional controls, that encompasses no more than 300 square kilometers. It must not extend farther:

(a) South than 36° 40′ 13.6661″ north latitude, in the predominant direction of ground water flow; and

(b) Than five kilometers from the repository footprint in any other direction; and

(2) The subsurface underlying the surface area.

Disposal means the emplacement of radioactive material into the Yucca Mountain disposal system with the intent of isolating it for as long as reasonably possible and with no intent of recovery, whether or not the design of the disposal system permits the ready recovery of the material.

Disposal of radioactive material in the Yucca Mountain disposal system begins when all of the ramps and other openings into the Yucca Mountain repository are sealed.

Ground water means water that is below the land surface and in a saturated zone.

Human intrusion means breaching of any portion of the Yucca Mountain disposal system, within the repository footprint, by any human activity.

Passive institutional controls means:

(1) Markers, as permanent as practicable, placed on the Earth's surface;

(2) Public records and archives;

(3) Government ownership and regulations regarding land or resource use; and

(4) Other reasonable methods of preserving knowledge about the location, design, and contents of the Yucca Mountain disposal system.

Peak dose means the highest annual committed effective dose equivalent projected to be received by the reasonably maximally exposed individual.

Performance assessment means an analysis that:

(1) Identifies the features, events, processes, (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring during 10,000 years after disposal;

(2) Examines the effects of those features, events, processes, and sequences of events and processes upon the performance of the Yucca Mountain disposal system; and

(3) Estimates the annual committed effective dose equivalent incurred by the reasonably maximally exposed individual, including the associated uncertainties, as a result of releases caused by all significant features, events, processes, and sequences of events and processes, weighted by their probability of occurrence.

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities.

Plume of contamination means that volume of ground water in the predominant direction of ground water flow that contains radioactive contamination from releases from the Yucca Mountain repository. It does not include releases from any other potential sources on or near the Nevada Test Site.

Repository footprint means the outline of the outermost locations of where the waste is emplaced in the Yucca Mountain repository.

Slice of the plume means a cross-section of the plume of contamination with sufficient thickness parallel to the prevalent direction of flow of the plume that it contains the representative volume.

Total dissolved solids means the total dissolved (filterable) solids in water as determined by use of the method specified in 40 CFR part 136.

Undisturbed performance means that human intrusion or the occurrence of unlikely natural features, events, and processes do not disturb the disposal system.

Undisturbed Yucca Mountain disposal system means that the Yucca Mountain disposal system is not affected by human intrusion.

Waste means any radioactive material emplaced for disposal into the Yucca Mountain repository.

Well-capture zone means the volume from which a well pumping at a defined rate is withdrawing water from an aquifer. The dimensions of the well-capture zone are determined by the pumping rate in combination with aquifer characteristics assumed for calculations, such as hydraulic conductivity, gradient, and the screened interval.

Yucca Mountain disposal system means the combination of underground engineered and natural barriers within the controlled area that prevents or substantially reduces releases from the waste.

§ 197.13 How is subpart B implemented?

The NRC implements this subpart B. The DOE must demonstrate to NRC that there is a reasonable expectation of compliance with this subpart before NRC may issue a license. In the case of the specific numerical requirements in § 197.20 of this subpart, and if performance assessment is used to demonstrate compliance with the specific numerical requirements in §§ 197.25 and 197.30 of this subpart, NRC will determine compliance based upon the mean of the distribution of projected doses of DOE's performance assessments which project the performance of the Yucca Mountain disposal system for 10,000 years after disposal.

§ 197.14 What is a reasonable expectation?

Reasonable expectation means that NRC is satisfied that compliance will be achieved based upon the full record before it. Characteristics of reasonable expectation include that it:

(a) Requires less than absolute proof because absolute proof is impossible to attain for disposal due to the uncertainty of projecting long-term performance;

(b) Accounts for the inherently greater uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system;

(c) Does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence; and

(d) Focuses performance assessments and analyses upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values.

§ 197.15 How must DOE take into account the changes that will occur during the next 10,000 years after disposal?

The DOE should not project changes in society, the biosphere (other than climate), human biology, or increases or decreases of human knowledge or technology. In all analyses done to demonstrate compliance with this part, DOE must assume that all of those factors remain constant as they are at the time of license application submission to NRC. However, DOE must

vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system over the next 10,000 years.

Individual-Protection Standard

§ 197.20 What standard must DOE meet?

The DOE must demonstrate, using performance assessment, that there is a reasonable expectation that, for 10,000 years following disposal, the reasonably maximally exposed individual receives no more than an annual committed effective dose equivalent of 150 microsieverts (15 millirems) from releases from the undisturbed Yucca Mountain disposal system. The DOE's analysis must include all potential pathways of radionuclide transport and exposure.

§ 197.21 Who is the reasonably maximally exposed individual?

The reasonably maximally exposed individual is a hypothetical person who meets the following criteria:

(a) Lives in the accessible environment above the highest concentration of radionuclides in the plume of contamination;

(b) Has a diet and living style representative of the people who now reside in the Town of Amargosa Valley, Nevada. The DOE must use projections based upon surveys of the people residing in the Town of Amargosa Valley, Nevada, to determine their current diets and living styles and use the mean values of these factors in the assessments conducted for §§ 197.20 and 197.25; and

(c) Drinks 2 liters of water per day from wells drilled into the ground water at the location specified in paragraph (a) of this section.

Human-Intrusion Standard

§ 197.25 What standard must DOE meet?

The DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 197.26) could occur without recognition by the drillers. The DOE must:

(a) If complete waste package penetration is projected to occur at or before 10,000 years after disposal:

(1) Demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual committed effective dose equivalent of 150 microsieverts (15 millirems) as a result of a human intrusion, at or before 10,000 years after disposal. The analysis must include all potential environmental pathways of radionuclide transport and exposure; and

(2) If exposures to the reasonably maximally exposed individual occur more than 10,000 years after disposal, include the results of the analysis and its bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance; and

(b) Include the results of the analysis and its bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance, if the intrusion is not projected to occur before 10,000 years after disposal.

§ 197.26 What are the circumstances of the human intrusion?

For the purposes of the analysis of human intrusion, DOE must make the following assumptions:

(a) There is a single human intrusion as a result of exploratory drilling for ground water;

(b) The intruders drill a borehole directly through a degraded waste package into the uppermost aquifer underlying the Yucca Mountain repository;

(c) The drillers use the common techniques and practices that are currently employed in exploratory drilling for ground water in the region surrounding Yucca Mountain;

(d) Careful sealing of the borehole does not occur, instead natural degradation processes gradually modify the borehole;

(e) Only releases of radionuclides that occur as a result of the intrusion and that are transported through the resulting borehole to the saturated zone are projected; and

(f) No releases are included which are caused by unlikely natural processes and events.

Ground Water Protection Standards

§ 197.30 What standards must DOE meet?

The DOE must demonstrate that there is a reasonable expectation that, for 10,000 years of undisturbed performance after disposal, releases of radionuclides from waste in the Yucca Mountain disposal system into the accessible environment will not cause the level of radioactivity in the representative volume of ground water to exceed the limits in the following Table 1:

TABLE 1.—LIMITS ON RADIONUCLIDES IN THE REPRESENTATIVE VOLUME

Radionuclide or type of radiation emitted	Limit	Is natural background included?
Combined radium-226 and radium-228	5 picocuries per liter	Yes.
Gross alpha activity (including radium-226 but excluding radon and uranium).	15 picocuries per liter	Yes.
Combined beta and photon emitting radionuclides	40 microsieverts (4 millirem) per year to the whole body or any organ, based on drinking 2 liters of water per day from the representative volume.	No.

§ 197.31 What is a representative volume?

(a) It is the volume of ground water that would be withdrawn annually from an aquifer containing less than 10,000 milligrams of total dissolved solids per liter of water to supply a given water demand. The DOE must project the concentration of radionuclides released from the Yucca Mountain disposal system that will be in the representative volume. The DOE must then use the projected concentrations to demonstrate a reasonable expectation to NRC that the Yucca Mountain disposal system complies with § 197.30. The DOE must make the following assumptions concerning the representative volume:

(1) It includes the highest concentration level in the plume of contamination in the accessible environment;

(2) Its position and dimensions in the aquifer are determined using average hydrologic characteristics which have cautious, but reasonable, values representative of the aquifers along the radionuclide migration path from the Yucca Mountain repository to the

accessible environment as determined by site characterization; and

(3) It contains 3,000 acre-feet of water (about 3,714,450,000 liters or 977,486,000 gallons).

(b) The DOE must use one of two alternative methods for determining the dimensions of the representative volume. The DOE must propose its chosen method, and any underlying assumptions, to NRC for approval.

(1) The DOE may calculate the dimensions as a well-capture zone. If DOE uses this approach, it must assume that the:

(i) Water supply well(s) has (have) characteristics consistent with public water supply wells in the Town of Amargosa Valley, Nevada, for example, well-bore size and length of the screened intervals;

(ii) Screened interval(s) include(s) the highest concentration in the plume of contamination in the accessible environment; and

(iii) Pumping rates and the placement of the well(s) must be set to produce an annual withdrawal equal to the representative volume and to tap the highest concentration within the plume of contamination.

(2) The DOE may calculate the dimensions as a slice of the plume. If DOE uses this approach, it must:

(i) Propose to NRC, for its approval, where the location of the edge of the plume of contamination occurs. For example, the place where the concentration of radionuclides reaches 0.1% of the level of the highest concentration in the accessible environment;

(ii) Assume that the slice of the plume is perpendicular to the prevalent direction of flow of the aquifer; and

(iii) Assume that the volume of ground water contained within the slice of the plume equals the representative volume.

Additional Provisions

§ 197.35 What other projections must DOE make?

To complement the results of § 197.20, DOE must calculate the peak dose of the reasonably maximally exposed individual that would occur after 10,000 years following disposal but within the period of geologic stability. No regulatory standard applies to the results of this analysis; however, DOE must include the results and their bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance.

§ 197.36 Are there limits on what DOE must consider in the performance assessments?

Yes. The DOE's performance assessments shall not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. The NRC shall exclude unlikely features, events, and processes, or sequences of events and processes from the assessments for the human intrusion and ground water protection standards. The specific probability of the unlikely features, events, and processes is to be specified by NRC. In addition, unless otherwise specified in NRC regulations, DOE's performance assessments need not evaluate, the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

§ 197.37 Can EPA amend this rule?

Yes. We can amend this rule by conducting another notice-and-comment rulemaking. Such a rulemaking must include a public comment period. Also, we may hold one or more public hearings, if we receive a written request to do so.

§ 197.38 Are The Individual Protection and Ground Water Protection Standards Severable?

Yes. The individual protection and ground water protection standards are severable.

[FR Doc. 01–14626 Filed 6–8–01; 2:05 pm]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
June 13, 2001

Part V

Department of Justice

Immigration and Naturalization

8 CFR Part 103, et al.

Children Born Outside the United States; Applications for Certificate of Citizenship; Final Rule and Notice

DEPARTMENT OF JUSTICE

8 CFR Parts 103, 310, 320, 322, 334, 337, 338, and 341

[INS No. 2101–00]

RIN 1115–AF98

Children Born Outside the United States; Applications for Certificate of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements Title I of the Child Citizenship Act of 2000 (CCA), Public Law 106–395. First, this rule amends the Immigration and Naturalization Service (Service) regulations by adding a new part which addresses application procedures for foreign-born children residing in the United States pursuant to a lawful admission for permanent residence, who acquire citizenship automatically under section 320 of the Immigration and Nationality Act (Act), as amended. This rule establishes procedures for these foreign-born children, including adopted children, to obtain certificates of citizenship. Second, this rule also addresses application procedures for foreign-born children residing outside of the United States, who can acquire citizenship under section 322 of the Act, as amended, by approval of an application and taking of the oath of allegiance.

The Service is publishing this interim rule to provide U.S. citizen parents seeking certificates of citizenship on behalf of their minor children with information about how to acquire certificates of citizenship under the current application process.

The Service will work with Congress, the adoption community, and other stakeholders to re-engineer the current application process not only for children who acquire U.S. citizenship automatically but also for children who acquire citizenship by application. This re-engineering will address both the application process and the costs.

Parents who wish to receive a certificate of citizenship for their minor children now may apply using the current procedures noted in this rule. Alternatively, they may apply for a U.S. passport from the Department of State and wait until the Service has completed re-engineering of the application process.

DATES: *Effective date:* This interim rule is effective June 13, 2001.

The CCA became effective on February 27, 2001. Publication of this regulation does not alter the effective date of the CCA nor does it affect the status of individuals who acquired U.S. citizenship by operation of law on that date.

Comment date: Comments must be submitted on or before August 13, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2101–00 on your correspondence. Written comments may also be submitted via facsimile to 202–305–0143. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Richard Sheridan, Immigration Services Division, Office of Field Operations, Immigration and Naturalization Service, 801 I Street NW., Suite 900, Washington, DC 20536, telephone (202) 616–0583.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2000, the President signed H.R. 2883, the Child Citizenship Act of 2000 (CCA), Public Law 106–395, into law. Title I, section 101 of the CCA permits certain foreign-born children who are residing in the United States pursuant to a lawful admission for permanent residence to acquire citizenship automatically upon fulfillment of certain conditions. Title I, section 102 of the CCA permits certain foreign-born children residing outside the United States to receive citizenship on approval of an application and taking of the oath of allegiance.

Title II of the CCA amends the Act and related statutes to provide protections for certain aliens who impermissibly voted in a Federal, State, or local election or falsely represented themselves as United States citizens in order to obtain Federal, State, or local benefits. The Service will address the provisions of Title II of the CCA in a separate rulemaking.

Does This Rule Supersede a Prior Rulemaking?

The Service published a proposed rule in the **Federal Register** on September 10, 1996, at 61 FR 47690, which would have amended the regulations at part 322 to reflect changes made to section 322 of the Act by the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103–416. The CCA amendments to section 322 of the Act, however, supersede the INTCA amendments. Thus, the previously proposed revisions to part 322 are no longer applicable under the CCA. The Service will remove that proposed rule from the Unified Agenda of Federal Regulations. The Service is revising part 322 in its entirety. Through this interim rule, the public will have an opportunity to comment on this revised part as well as the new part 320, which establishes procedures for those children who acquire citizenship automatically under the CCA. In addition, the Service intends to publish another rule to reflect the re-engineered process once that process is complete.

When Does the CCA Take Effect?

The CCA became effective on February 27, 2001, which was 120 days from the date of enactment.

What Are the Conditions for Automatic Citizenship Under the CCA?

Foreign-born children who are residing in the United States will acquire citizenship automatically if:

(1) The child has at least one United States citizen parent (by birth or naturalization); and

(2) The child currently is under 18 years of age; and

(3) The child currently is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.

If adopted, the child must meet all of the above requirements as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

What Are the Conditions for Citizenship on Application Under the CCA?

Foreign-born children who are residing outside of the United States will acquire citizenship on approval of an application for a certificate of citizenship and taking of the oath of allegiance, unless the oath is waived in accordance with section 337(a) of the Act. The Service will issue a certificate of citizenship if the following conditions have been fulfilled:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14, or the United States citizen parent has a citizen parent who has been physically present in the United States or its outlying possessions

for at least 5 years, at least 2 of which were after the age of 14;

(3) The child currently is under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

If an adopted child, all of the above conditions must be fulfilled and the child must satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

Does the CCA Apply to Foreign-Born Children Who Are Now Over the Age of 18?

No, section 104 of the CCA provides that on the effective date, February 27, 2001, its provisions apply to those ''individuals who satisfy the requirements of section 320 or 322 of the Immigration and Nationality Act, as in effect on such effective date.'' Both section 320 and 322 of the Act, as amended, require that an individual be under the age of 18 years in order to be eligible for citizenship under the new provisions. Individuals who are 18 years old or older on February 27, 2001, do not qualify for citizenship under the new law. However, an individual over the age of 18 can apply for naturalization, if eligible in all respects.

Who Is Considered a ''Child'' Under the CCA?

Under the CCA an adopted child must satisfy the requirements of section 101(b)(1) of the Act in order to be eligible to acquire automatic citizenship. Thus, currently those adopted children who immigrate to the United States (or adjust status in the United States to that of a lawful permanent resident) under section 101(b)(1)(E) of the Act, or under 101(b)(1)(F) of the Act and thereafter have a full, final and complete adoption, are qualified children. The term ''child'' as applied to all other children shall have the same meaning as that provided in the text of section 101(c)(1) of the Act.

What Is Meant by the Phrase ''Residing in the United States Pursuant to a Lawful Admission for Permanent Residence''?

To qualify under the CCA, applicants must establish not only that they have been admitted to the United States as lawful permanent residents, but also that they are ''residing in'' the United States pursuant to admission in such status. Admission in any immigrant classification will satisfy the requirement that the applicant be admitted to the United States as a lawful permanent resident. A more difficult question is raised by the requirement that the applicant be ''residing in'' the United States. Under the section 101(a)(33) of the Act, ''residence'' is defined as ''the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.'' On the other hand, in certain circumstances, an alien with lawful permanent resident status may live outside the United States without losing that status, and for some purposes U.S. citizens living outside the United States are considered to still have a residence in the United States.

The Service, in conjunction with the Department of State, is reviewing the legal question of whether, and if so, under what circumstances, a child with lawful permanent resident status who is actually living outside the United States can be described as ''residing in'' the United States for purposes of the CCA. Until this question is resolved, the Service and Department of State will only document as a United States citizen a child in two instances. First, the child will qualify if, on or after February 27, 2001, the child is admitted as a lawful permanent resident and actually living in the United States. Second, in the case of a child who was previously admitted as a lawful permanent resident but was absent from the United States on February 27, 2001, the child will qualify only if that child returned to the United States after February 27, 2001 and was re-admitted as a lawful permanent resident. The child must also be in the legal and physical custody of the U.S. citizen parent. The Service and Department of State, in the interim, will regard that child as residing in the United States.

What Is a Lawful Admission and Maintenance of Lawful Status for Purposes of Section 322 of the Act?

Under section 322 of the Act, a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered (unless waived). ''Admission'' is defined under section 101(a)(13) of the Act. A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

What Is Meant by the Term ''Legal'' Custody?

Both section 320 and 322 of the Act, as amended by the CCA, require a U.S. citizen parent(s) to establish that the child is in his or her legal custody. The term ''legal custody'' refers to the responsibility for and authority over a child. For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of: (1) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated), (2) a biological child who currently resides with a surviving natural parent (if the other parent is deceased), or (3) in the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded ''joint custody,'' to have legal custody of a child. ''Joint custody'' refers to the award of equal responsibility for and authority over the care, education, religion, medical treatment and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

In the case of an adopted child or a child of divorced or legally separated parents, a determination that a parent has legal (and/or joint) custody will be based on the provisions of the adoption and/or divorce decree or separation agreement executed under the laws of the state or country of residence. In cases where the issue of custody is not explicitly addressed in the divorce decree or separation agreement, a determination of legal and/or joint

custody shall be made based on the laws of the State or country of residence.

Do Children Who Qualify for Automatic Citizenship Under the CCA Have To Apply for a Certificate of Citizenship?

No. They are citizens automatically, if they meet all the conditions, without having to file an application. However, parents of children who meet the conditions for automatic acquisition of citizenship under the CCA may either apply for a certificate of citizenship from the Service or for a passport from the Department of State, if they want to document the child's status as a U.S. citizen.

What Forms and Documents Must Be Filed in Order To Obtain a Certificate of Citizenship for a Minor Adopted Child Who Qualifies for Automatic Citizenship Under the CCA?

U.S. citizen parents of adopted children should submit a Form N–643, Application for Certificate of Citizenship in Behalf of an Adopted Child, with the required filing fee of $125.00. In most instances, the Service will have all the required documentation necessary to adjudicate the application for a certificate of citizenship in the child's administrative file. U.S. citizen parents of adopted children generally will only need to submit photographs of the child and the required fee. For children who immigrate to the United States and are adopted or have to be re-adopted in the United States, the Service will also request evidence of a full and final adoption. In certain instances, the Service may request additional documentation to supplement the record if required documentation is not in Service administrative file(s) or to resolve discrepancies between the application and the documentation in Service records.

What Forms and Documents Must Be Filed in Order to Obtain a Certificate of Citizenship for a Minor Biological Child Who Qualifies for Automatic Citizenship Under the CCA?

U.S. citizen parents of biological children should submit a Form N–600, Application for Certificate of Citizenship, with the required fee of $160.00. As with adopted children, in most instances, the Service will have all the required documentation necessary to adjudicate the application for certificate of citizenship in the child's or parent's administrative file. U.S. citizen parents of biological children generally will only need to submit photographs of the child and the required fee. In certain instances, the Service may request additional documentation to supplement the record if required documentation is not in Service administrative file(s) or to resolve discrepancies between the application and the documentation in Service records.

What Forms and Documents Must Be Filed in Order To Obtain a Certificate of Citizenship for a Biological or Adopted Child Who Resides Outside the United States and Qualifies for Citizenship on Application Under the CCA?

U.S. citizen parents should submit a Form N–600, with the required fee of $160.00, for biological children and Form N–643, with the required fee of $125.00, for adopted children. The Service will also require parents to submit, as appropriate:

(1) Photographs of the child;

(2) Child's birth certificate;

(3) Evidence of U.S. citizen parent's citizenship;

(4) Marriage certificate (if applicable);

(5) Evidence of termination of previous marriages (if applicable);

(6) Evidence of U.S. citizen parent's (or the citizen parent of the U.S. citizen) physical presence in the United States;

(7) Evidence of the child's lawful admission to the United States and maintenance of such status;

(8) Evidence of a full and final adoption (if applicable);

(9) Evidence of all legal name changes (if applicable).

In addition, in certain circumstances, depending on the facts of the case, parents may also be required to submit:

(1) Evidence of legitimation (if applicable);

(2) Evidence of legal custody (if applicable);

(3) Evidence that an adopted child (not orphan) meets the definition of 101(b)(1)(E) (if applicable); and

(4) Evidence of an approval notice for a Form I–600, classifying the child as an orphan (if applicable).

When Is it Necessary To File the Form N–600/N–643, Supplement A?

Under the CCA, the U.S. citizen parent of a child living abroad must have at least 5 years of physical presence in the United States, 2 years of which are after the age of 14, in order to apply for a certificate of citizenship on behalf of a minor child. If the U.S. citizen parent cannot meet this requirement, a child may still qualify for citizenship under the CCA if the U.S. citizen parent has a U.S. citizen parent who met the physical presence requirements noted above. If the child is relying on the physical presence of the U.S. citizen parent's citizen parent, the Form N–600/N–643, Supplement A must also be submitted. There is no fee for this supplement form.

Will the Service Be Revising the Forms for Certificate of Citizenship for an Adopted or Biological Child Who Qualifies for Citizenship Under the CCA?

As part of its efforts to re-engineer and streamline the certificate of citizenship application process, the Service is considering consolidating the Form N–643 and the Form N–600/N–643, Supplement A, into the Form N–600. The information requested on these three forms is largely duplicative and by consolidating the information on one form, all United States citizen parent(s) potentially will be able to request a certificate of citizenship on behalf of their minor child without having to complete multiple forms. The Service is publishing elsewhere in this issue of the **Federal Register** an information collection noitce with a draft revised Form N–600 on which the Service will solicit public comment.

The Service, after review of all public comments, will determine whether it will use the revised and consolidated Form N–600. If so, the Service, upon approval by OMB, will publish a notice in the **Federal Register** addressing the effective date for use of the form.

The public should continue to use the current Forms N–600, N–643, and N–600/N–643, Supplement A until further notice.

Where Should the Application Be Filed?

For minor biological children who reside in the United States pursuant to a lawful admission for permanent residence and acquire citizenship automatically, a U.S. citizen parent should file the Form N–600, with the required fee of $160.00, as specified under 8 CFR 103.7(b)(1), with the appropriate district office or suboffice in the United States having jurisdiction over the parent and child's place of residence.

For minor adopted children who reside in the United States pursuant to a lawful admission for permanent residence and acquire citizenship automatically, a U.S. citizen parent should file the Form N–643, with the required fee of $125.00, as specified under 8 CFR 103.7(b)(1), with the appropriate district office or suboffice in the United States having jurisdiction over the parent and child's place of residence.

For minor biological children who reside outside of the United States with the U.S. citizen parent, a U.S. citizen parent may file the Form N–600, with

the required fee of $160.00, as specified under 8 CFR 103.7(b)(1), with any stateside district office. The parent should include a request with the Form N–600, noting preferred interview dates, and should allow sufficient time (at least 90 days) to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address.

For minor adopted children who reside outside of the United States with the U.S. citizen parent, a U.S. citizen parent may file the Form N–643, with the required fee of $125.00, as specified under 8 CFR 103.7(b)(1), with any stateside district office. The parent should include a request with the Form N–643, noting preferred interview dates, and should allow sufficient time (at least 90 days) to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address.

Are Interviews Necessary for Applications Filed Under New Sections 320 or 322?

Under 8 CFR 341.2, in certain instances the Service may process applications for certificates of citizenship without an interview. Generally an interview will not be required to obtain a certificate of citizenship under the CCA. However, the Service may request an interview to clarify or resolve issues raised by, or discrepancies between, the application and Service records. Applications filed for children who become citizens upon their parent(s)' naturalization frequently can be adjudicated without an interview, provided the Service has proper evidence of the parent(s)' naturalization and the Service administrative file(s) that contain the documentation of the naturalizing parent and child's identity and relationship. Similarly, applications filed for children who immigrated as IR–3s (orphan adopted abroad by a U.S. citizen) may be adjudicated without an interview if the office has the child's A-file. Interviews for IR–4s (orphans coming to the United States to be adopted by U.S. citizen parent(s)) may be waived if the adjudicating officer has the child's administrative file and evidence of the final adoption (or the recognition by the state of residence of a foreign adoption).

All applications for certificates of citizenship filed under section 322 require an interview with both the U.S. citizen parent and the child.

How Will the Service Process the Form N–600 and the Form N–643 Applications That Were Pending When the Law Took Effect?

For pending applications filed to recognize citizenship status already acquired, the Service will continue to adjudicate such applications under the relevant law applicable to the case. For applications that required Service approval before an individual could be deemed a United States citizen, as of February 27, 2001, the Service will adjudicate those cases under the new law and for applicants who automatically acquire citizenship as of February 27, 2001, the Service will issue certificates of citizenship reflecting the person's citizenship as of that date. The Service will reopen a previously denied N–600 and adjudicate the application pursuant to the new law if the application would have been approvable if filed on or after February 27, 2001 under the new section 320 of the Act. In those cases, the applicant will not be required to refile the application.

What Effect Does the CCA Have on the Status of Persons Who Have Already Automatically Acquired Citizenship Under Sections 320 and 321 of the Act as in Effect Prior to February 27, 2001?

The CCA amends section 320 and repeals section 321 of the Act, effective February 27, 2001. Therefore, February 26, 2001, was the last date on which a person could automatically become a United States citizen under the provisions of section 320 and 321 of the Act as previously in force. All persons who acquired citizenship automatically under the provisions of sections 320 and 321 of the Act as previously in force up to February 26, 2001, may apply for a certificate of citizenship at any time and the application will be adjudicated under the provisions of sections 320 and 321 of the Act as in force prior to February 27, 2001.

What if the Form N–600 or N–643 Is Denied?

If the district director denies the Form N–600 or N–643, the applicant will be provided with a written decision detailing the reasons for denial. An applicant may appeal the decision to the Administrative Appeals Office (AAO) by filing a Form I–290B, Notice of Appeal to the Administrative Appeals Unit with the appropriate fee, within 30 days from the date of decision.

Does the CCA Change the Current Process for Immigrating Adopted Children and Orphans to the United States?

No, the current procedures for immigrating adopted children and orphans to the United States, as specified under 8 CFR part 204, are unaffected by the CCA. However, the Service is investigating ways in the future to streamline the process for documenting automatic acquisition of citizenship by these children. In addition, the Service intends to remove the Affidavit of Support (Form I–864) requirement for children adopted abroad who will receive citizenship at the time of entry as lawful permanent residents. This is the majority of cases. However, children born and residing outside of the United States or children who will not be adopted until after they enter the United States will still require the affidavit of support.

Do Adopted Children Who Initially Entered the United States as Nonimmigrants or Were Paroled Into the United States for Humanitarian Purposes Qualify for Automatic Citizenship if Currently They Do Not Have Lawful Permanent Resident Status?

No. Adopted children who are currently residing in the United States with a U.S. citizen parent(s) but who are in nonimmigrant or parole status do not qualify for automatic citizenship. Such children will acquire automatic citizenship only after they immigrate to the United States or adjust status in the United States to that of a lawful permanent resident. Once the child becomes a lawful permanent resident and all other requirements of the CCA are met, the child will be a citizen of the United States automatically by operation of law.

Can Children Adopted From the Republic of the Marshall Islands, Federated States of Micronesia, or Palau Qualify for Automatic Citizenship Under the CCA if They Were Admitted Into the United States as Nonimmigrants?

No. There are currently in existence a Compact of Free Association between the United States of America and the Republic of the Marshall Islands and with the Federated States of Micronesia (48 U.S.C. 1910, note), and a Compact of Free Association between the United States of America and Palau (48 U.S.C. 1931, note) (Compacts, Compact countries). Pursuant to section 141(a) of the Compacts, citizens of the Compact Countries may enter the United States,

lawfully engage in occupations, accept employment, and establish residence as non-immigrants in the United States, its territories and possessions, without regard to section 212 (a)(5)(A) (labor certification), (7)(A) (immigrant visa) and (B) (non-immigrant visa) of the Immigration and Nationality Act (INA). Citizens of the Compact Countries who seek to immigrate into the United States must follow standard procedures of the INA. Adopted children who enter the United States to reside with their adoptive parents are not temporary visitors, but intend to become permanent residents, *i.e.,* to immigrate. The entry of an adopted child as a non-immigrant under section 141(a), therefore, constitutes improper use of that procedure and an evasion of the visa requirements of the INA. It also jeopardizes, as will be shown in the following paragraph, the child's ability to acquire automatic citizenship under the CCA.

Children who are adopted in these countries and are admitted to the United States under section 141(a) of the Compacts do not qualify for automatic citizenship under the CCA because they were admitted as nonimmigrants. Such children, however, can benefit from the CCA once they become lawful permanent residents.

To obtain lawful permanent resident status for such adopted children, U.S. citizen parents must file a Form I–130, Petition for Alien Relative, establishing that the child meets the requirements of section 101(b)(1)(E) of the Act. Section 101(b)(1)(E) requires the child to have been adopted under the age of 16 years and to have resided with and in the legal custody of the adoptive U.S. citizen parent for at least 2 years.

Do Non-Citizen Children Adopted From the Commonwealth of the Northern Mariana Islands Qualify for Automatic Citizenship Under the CCA?

Only if such adopted children meet the requirements of the CCA, including lawful permanent residence.

(a) Children Born in the Commonwealth of the Northern Mariana Islands (CNMI)

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant), 48 U.S.C. 1801, note, provides that the CNMI is under the sovereignty of the United States (Covenant, section 101). All persons born in the CNMI on or after November 3, 1986, the date on which the Covenant became fully effective, are citizens of the United States at birth (Covenant, section 303). Most persons born in the CNMI prior to November 3, 1986, also became United States citizens on that day (Covenant, section 301). Accordingly, most children of adoptable age born in the CNMI are United States citizens. Their United States citizenship therefore does not depend on the CCA.

(b) Adopted Children Residing in the CNMI Who Are Citizens of the Compact Countries

There are currently in existence a Compact of Free Association between the United States of America and the Republic of the Marshall Islands and with the Federated States of Micronesia (48 U.S.C. 1910, note), and a Compact of Free Association between the United States of America and Palau (48 U.S.C. 1931, note) (Compacts, Compact countries). Pursuant to section 141(a) of the Compacts, citizens of the Compact Countries may enter the United States, lawfully engage in occupations, accept employment, and establish residence as non-immigrants in the United States, its territories and possessions, without regard to section 212 (a)(5)(A) (labor certification), (7)(A) (immigrant visa) and (B) (non-immigrant visa) of the Immigration and Nationality Act (INA). Citizens of the Compact Countries who seek to immigrate into the United States must follow standard procedures of the INA. Adopted children who enter the United States to reside with their adoptive parents are not temporary visitors, but intend to become permanent residents, *i.e.*, to immigrate. The entry of an adopted child as a non-immigrant under section 141(a), therefore, constitutes improper use of that procedure and an evasion of the visa requirements of the INA. It also jeopardizes, as will be shown in the following paragraph, the child's ability to acquire automatic citizenship under the CCA.

Children who are adopted in these countries and are admitted to the United States under section 141(a) of the Compacts do not qualify for automatic citizenship under the CCA because they were admitted as nonimmigrants. Such children, however, can benefit from the CCA once they become lawful permanent residents.

To obtain lawful permanent resident status for such adopted children, U.S. citizen parents must file a Form I–130, Petition for Alien Relative, establishing that the child meets the requirements of section 101(b)(1)(E) of the Act. Section 101(b)(1)(E) requires the child to have been adopted under the age of 16 years and to have resided in the United States, in the legal custody of the adoptive U.S. citizen parent for at least 2 years.

(c) Adopted Children Residing in the CNMI Who Are Neither United States Citizens Nor Citizens of a Compact Country

Adopted children who are currently residing in the CNMI with a U.S. citizen parent(s) who are neither United States citizens nor citizens of a Compact Country but who are in nonimmigrant or parole status do not qualify for automatic citizenship. Such children will acquire automatic citizenship only after they immigrate to the United States or adjust status in the United States to that of a lawful permanent resident. Once the child becomes a lawful permanent resident and all other requirements of the CCA are met, the child will be a citizen of the United States automatically by operation of law.

It should be noted, however, first, that it is not likely that many adopted children fall into that class, and, second, due to the peculiar immigration status of the CNMI, the vast majority of those adopted children will be lawful permanent residents. Although the CNMI is under the sovereignty of the United States and most of the persons born in the CNMI are citizens of the United States, the CNMI is not a part of the United States for the purposes of the Immigration and Nationality Act (INA). Section 101(a)(38). Aliens who seek to enter the United States governed by the INA (all areas subject to the sovereignty of the United States except American Samoa and the CNMI) from the CNMI are therefore subject to the visa requirements of the INA. There is no equivalent provision to section 141(a) of the Compacts in the Covenant that would permit the entry of non-immigrants from the CNMI under a visa waiver. Hence, alien adopted children residing in the CNMI who are not citizens of the Compact Countries must have a visa, and it may be assumed that either the adoptive parent or the issuing visa official will see to it that the adopted children will travel under an immigrant visa that will insure the acquisition of lawful permanent resident status.

Thus for all practical purposes the only alien adopted children from the CNMI who lack the lawful permanent resident requirement of the CCA would be citizens of the Compact Countries who entered as non-immigrants, and parolees.

When Does a Child Automatically Acquire Citizenship?

A child who qualifies for citizenship automatically will be deemed a citizen on the date the last condition is fulfilled

(*e.g.,* the date of final, full and complete adoption, naturalization of the parent, or admission of the child as a lawful permanent resident, whichever happens last). United States citizen parents should note that children who are admitted to the United States under section 101(b)(1)(F) of the Act as IR–4s (orphans coming to the United States to be adopted by U.S. citizen parent(s)) do not automatically acquire citizenship on entry, even though admitted as lawful permanent residents. Children admitted as IR–4s (orphans coming to the United States to be adopted by U.S. citizen parent(s)) must have been finally adopted in the United States or had the foreign adoption recognized by the state where the child is permanently residing. For those children under the age of 18 who acquired citizenship under the CCA on the date the law became effective, February 27, 2001, that date is the date of their citizenship.

Good Cause Exception

This interim rule is effective on publication, although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reason, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b). The amendments made by Public Law 106–395 apply to individuals who satisfy the requirements of section 320 and 322 of the Act beginning February 27, 2001. It is therefore impracticable to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures for U.S. citizen parents to apply for certificates of citizenship for foreign-born children residing permanently in the United States or residing abroad. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 13132

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The Service is considering consolidating the Form N–643, and the Form N–600/N–643, Supplement A, into the Form N–600. In addition, the information collection requirement, Form N–600 is in the process of being revised. Since this interim rule takes effect on publication, the public should continue to use Forms N–600, N–643, and N–600/N–643, Supplement A until further notice.

The Service is publishing a draft copy of this form in an information collection notice published in this issue of the **Federal Register** to give the public a chance to comment on the form.

The Service, after review of all public comments, will determine whether it will use the revised and consolidated Form N–600. If so, the Service, upon approval by OMB, will publish a notice in the **Federal Register** addressing the effective date for use of the form.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 310

Citizenship and naturalization, Courts.

8 CFR Part 320

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization, Courts.

8 CFR Part 338

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 341

Citizenship and naturalization, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.1 is amended by:

a. Removing the period at the end of paragraph (f)(3)(iii)(MM); and inserting a ''; and'' in its place; and by

b. Adding a new paragraph (f)(3)(iii)(NN), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(NN) Applications for certificates of citizenship under §§ 320.5 and 322.5 of this chapter.

* * * * *

PART 310—NATURALIZATION AUTHORITY

3. The authority citation for part 310 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1421, 1443, 1447, 1448; 8 CFR part 2.

§ 310.3 [Amended]

4. In § 310.3, paragraph (b) is amended in the last sentence by removing the reference to ''322(c),''.

5. Part 320 is added to read as follows:

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

Sec.

320.1 What definitions are used in this part?
320.2 Who is eligible for citizenship?
320.3 How, where, and what forms and other documents should be filed?
320.4 Who must appear for an interview on the application for citizenship?
320.5 What happens if the application is approved or denied by the Service?

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 320.1 What definitions are used in this part?

As used in this part, the term:

Adopted means adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered to have been fully, finally and completely adopted and must be readopted in the United States. Readoption requirements may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that state's adoption laws.

Adopted child means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

Child means a person who meets the requirements of section 101(c)(1) of the Act.

Joint custody, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

Legal custody refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded ''joint custody,'' to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

§ 320.2 Who is eligible for citizenship?

(a) *General.* To be eligible for citizenship under section 320 of the Act, a person must establish that the following conditions have been met after February 26, 2001:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The child is under 18 years of age; and

(3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.

(b) *Additional requirements if child is adopted.* If adopted, the child must meet all of the requirements in paragraph (a) of this section as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

§ 320.3 How, where, and what forms and other documents should be filed?

(a) *Application.* Individuals who are applying for certificate of citizenship on their own behalf should file a Form N–600, Application for Certificate of Citizenship. An application for a certificate of citizenship under this section on behalf of a minor biological child shall be submitted on Form N–600, Application for Certificate of Citizenship, by the U.S. citizen parent(s) or legal guardian. An application for a certificate of citizenship under this section on behalf of a minor adopted child shall be submitted on Form N–643, Application for Certificate of Citizenship in Behalf of An Adopted Child by U.S. citizen adoptive parent(s) or legal guardian. The completed application and accompanying supporting documentation must be filed at the appropriate stateside Service district office or sub-office with jurisdiction over the U.S. citizen parent and child's residence. The application must be filed with the filing fee required in § 103.7(b)(1) of this chapter.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under § 320.2. In addition to the forms and the appropriate fee as required in § 103.7(b)(1) of this chapter, an applicant must submit the following required documents unless such documents are already contained in the Service administrative file(s):

(i) The child's birth certificate or record;

(ii) Marriage certificate of child's parents (if applicable);

(iii) If the child's parents were married before their marriage to each other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent, (i.e., birth certificate; naturalization certificate; FS–240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying

legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody;

(vii) Copy of Permanent Resident Card/Alien Registration Receipt Card or other evidence of lawful permanent resident status (e.g. I–551 stamp in a valid foreign passport or Service-issued travel document);

(viii) If adopted, a copy of the full, final adoption decree and, if the adoption was outside of the United States and the child immigrated as an IR–4 (orphans coming to the United States to be adopted by U.S. citizen parent(s)), evidence that the foreign adoption is recognized by the state where the child is permanently residing; and

(ix) Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

(2) If the Service requires any additional documentation to make a decision on the application for certificate of citizenship, applicants may be asked to provide that documentation under separate cover or at the time of interview. Applicants do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or an immigrant petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

§ 320.4 Who must appear for an interview on the application for citizenship?

All applicants (and U.S. citizen parent(s) if application filed on behalf of a minor biological or adopted child) must appear for examination unless such examination is waived under the guidelines expressed in § 341.2 of this chapter.

§ 320.5 What happens if the application is approved or denied by the Service?

(a) *Approval of application.* If the application for the certificate of citizenship is granted, after the applicant takes the oath of allegiance prescribed in 8 CFR part 337, unless the oath is waived, the Service will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal on Form I–290B, Notice of Appeal to the Administrative Appeals Unit (AAU), with the required fee prescribed in § 103.7(b)(1) of this chapter, in accordance with the instructions therein and with any supporting documentation addressing the reasons for denial. To be timely, an appeal must be filed within 30 days of service of the decision. After an application for a certificate of citizenship has been denied and the time for appeal has expired, a second application submitted by the same individual shall be rejected and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7. A decision shall be issued with notification of appeal rights in all certificate of citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

6. Part 322 is revised to read as follows:

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

Sec.
322.1 What are the definitions used in this part?
322.2 Who is eligible for citizenship?
322.3 How, where, and what forms and other documents should the United States citizen parent(s) file?
322.4 Who must appear for an interview on the application for citizenship?
322.5 What happens if the application is approved or denied by the Service?

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.1 What are the definitions used in this part?

As used in this part the term:

Adopted means adopted pursuant to a full, final and complete adoption. In the case of an orphan adoption, if a foreign adoption was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, an orphan is not considered to have been adopted and must be readopted in the United States or satisfy the requirements of section 101(b)(1)(E) of the Act.

Adopted child means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

Child means a person who meets the requirements of section 101(c)(1) of the Act.

Lawful admission shall have the same meaning as provided in section 101(a)(13) of the Act.

Joint custody, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

Legal custody refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded ''joint custody,'' to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

§ 322.2 Who is eligible for citizenship?

(a) *General.* A child will be eligible for citizenship under section 322 of the Act, if the following conditions have been fulfilled:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14, or the United States citizen parent has a United States citizen parent who has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14;

(3) The child currently is under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

(b) *Additional requirements if child is adopted.* If an adopted child, all of the requirements in paragraph (a) of this section must be fulfilled and the child must satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

§ 322.3 How, where, and what forms and other documents should the United States citizen parent(s) file?

(a) *Application.* An application for a certificate of citizenship under this section on behalf of a biological child shall be submitted on Form N–600, Application for Certificate of Citizenship, by the U.S. citizen parent(s). An application for a certificate of citizenship under this section on behalf of an adopted child shall be submitted on Form N–643, Application for Certificate of Citizenship in Behalf of An Adopted Child by U.S. citizen adoptive parent(s). The completed application and accompanying supporting documentation may be filed at any stateside district office or suboffice. The application must be filed with the filing fee required in § 103.7(b)(1) of this chapter. The U.S. citizen parent should include a request with the N–600 or N–643, noting preferred interview dates, and should allow sufficient time (at least ninety days) to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under § 322.2. In addition to the forms and the appropriate fee as required in § 103.7(b)(1) of this chapter, an applicant must submit the following required documents unless such documents are already contained in the Service administrative file(s):

(i) The child's birth certificate or record;

(ii) Marriage certificate of child's parents (if applicable);

(iii) If the child's parents were married before their marriage to each other, proof of termination of any previous marriage of each parent (*e.g.,* death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent (*i.e.*, birth certificate; naturalization certificate; FS–240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody (if applicable);

(vii) Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements (*e.g.*, school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations);

(viii) Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status (e.g., Form I–94, Arrival/Departure Record) (in certain circumstances, this evidence may be presented at the time of interview);

(ix) If adopted, a copy of a full, final adoption decree;

(x) For adopted children (not orphans) applying under section 322 of the Act, evidence that they satisfy the requirements of section 101(b)(1)(E);

(xi) For adopted orphans applying under section 322 of the Act, a copy of notice of approval of a Form I–600 Petition to Classify Orphan as an Immediate Relative, and supporting documentation for such form (except the home study); and

(xii) Evidence of all legal name changes, if applicable, for child, U.S. citizen parent, or U.S. citizen grandparent.

(2) If the Service requires any additional documentation to make a decision on the Form N–600 or N–643, parents may be asked to provide that documentation under separate cover or at the time of interview. Parents do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or another immigrant petition or application and included in a Service administrative file. Parents should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

§ 322.4 Who must appear for an interview on the application for citizenship?

The U.S. citizen parent and the child shall appear in person before a Service officer for examination on the application for certificate of citizenship.

§ 322.5 What happens if the application is approved or denied by the Service?

(a) *Approval of application.* If the application for certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR part 337, unless the oath is waived, the Service will issue a certificate of citizenship. The child is a citizen as of the date of approval and administration of the oath of allegiance.

(b) *Denial of application.* If the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal on Form I–290B, Notice of Appeal to the Administrative Appeals Unit (AAU), with the required fee prescribed in § 103.7(b)(1) of this chapter, in accordance with the instructions therein and with any supporting documentation addressing the reasons for denial. To be timely filed, an appeal must be filed within 30 days of service of the decision. After an application for a certificate of citizenship has been denied and the time for appeal has expired, a second application submitted by the same individual shall be rejected and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7. A decision shall be issued with notification of appeal rights in all certificate of citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

PART 334—APPLICATION FOR NATURALIZATION

7. The authority citation for part 334 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 334.1 [Amended]

8. Section 334.1 is amended by removing the reference to ''322,''.

§ 334.2 [Amended]

9. Section 334.2 is amended by removing the reference to ''322,'' from the first sentence in paragraph (a).

PART 337—OATH OF ALLEGIANCE

10. The authority citation for part 337 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

§ 337.9 [Amended]

11. Section 337.9 is amended by removing and reserving paragraph (b).

PART 338—CERTIFICATE OF NATURALIZATION

12. The authority citation for part 338 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 338.4 [Removed and reserved]

13. Section 338.4 is removed and reserved.

PART 341—CERTIFICATES OF CITIZENSHIP

14. The authority citation for part 341 is revised to read as follows:

Authority: Pub. L. 82–414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

15. Section 341.2 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 341.2 Examination upon application.

(a) * * *

(1) *When testimony may be omitted.* An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if the Service officer adjudicating the case has in the Service administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship, or if the application is accompanied by one of the following:

* * * * *

§ 341.7 [Amended]

16. Section 341.7 is amended by removing and reserving paragraph (b).

Dated: June 5, 2001.

Kevin D. Rooney,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–14579 Filed 6–12–01; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Notice of Information Collection Under Review; Application for Certificate of Citizenship.

The Department of Justice, Immigration and Naturalization Service (Service) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Service is considering consolidating the Form N–643, and the Form N–600/N–643, Supplement A, into the Form N–600. In addition, the information collection requirement, Form N–600 is in the process of being revised. Until such proposed revised form is approved by the Office of Management and Budget, the public should continue to use Forms N–600, N–643, and N–600/N–643, Supplement A until further notice.

The Service is publishing a draft copy of this form as well as the related interim rule elsewhere in this issue of the **Federal Register** to allow the public an opportunity to comment on the form and the rule simultaneously. Written comments on the form are encouraged and will be accepted for sixty days until August 13, 2001. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection: Revision of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is provided by the Service as a uniform format for obtaining essential data necessary to determine the applicant's eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 67,936 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 67,936 annual burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of this information collection requirement, including suggestions for reducing the burden, should direct them to the Immigration and Naturalization Service, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 4034, 425 I Street, NW., Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., National Place Building, Suite 1220, Washington, DC 20530.

Dated: June 8, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0018

Application for Certificate of Citizenship

Instructions

WHAT IS THIS FORM?

This form, the N-600, is an application for certificate of citizenship.

To request INS forms, call our toll-free forms line at **1-800-870-3676**. You may also get INS forms and information about the immigration laws and regulations by calling **1-800-375-5283** or from the INS internet website at **www.ins.usdoj.gov**.

WHO SHOULD USE THIS FORM?

The following individuals may use this form:

- Any person claiming U.S. citizenship through a U.S. citizen father, mother, both parents or marriage to a U.S. citizen prior to September 22, 1922.
- Any person claiming U.S. citizenship through the naturalization of an alien parent(s).
- A U.S. citizen parent seeking citizenship on behalf of a minor adopted or biological child under section 320 of the Immigration and Nationality Act (INA) (providing for automatic citizenship for biological and adopted children who meet certain conditions while under the age of 18 years).
- A U.S. citizen parent seeking citizenship on behalf of a minor adopted or biological child under section 322 of the INA (providing for citizenship through an application process for biological and adopted children who reside outside of the United States and meet certain conditions while under the age of 18 years).

WHO CAN FILE THIS FORM?

The Form N-600 may be filed by any individual claiming to have acquired or derived U.S. citizenship through a U.S. citizen.

In the case of minor adopted or biological children (under 18 years) qualifying for citizenship under section 320 or 322 of the INA, the application must be filed by the U.S. citizen parent with legal and physical custody of the child.

WHAT DOES IT COST TO APPLY FOR A CERTIFICATE OF CITIZENSHIP AND HOW SHOULD THE FEE BE PAID?

Except for U.S. citizen parents requesting a certificate of citizenship for an adopted child, all applicants must pay the fee for a Form N-600, application for certificate of citizenship - **$160.00**.

For U.S. citizen parents filing on behalf of an adopted minor child under section 320 or 322 of the INA (checking **Part 2, Box "C" on the Form**), the fee for the Form N-600 is **$125.00**. This fee must be paid at the time of filing the application. The fee is not refundable, even if the application is subsequently withdrawn.

Use the following guidelines when you prepare your check or money order:

- The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency. **DO NOT MAIL CASH.**
- Make the check or money order payable to **Immigration and Naturalization Service**, unless:
  - you live in Guam and are filing your application there, make it payable to **Treasurer, Guam**; or
  - you live in the U.S. Virgin Islands and are filing your application there, make it payable to **Commissioner of Finance of the Virgin Islands**.

DO NOT USE THE INITIALS "INS" ON YOUR CHECK OR MONEY ORDER

WHERE DO I SEND THE APPLICATION?

The completed Form N-600 and accompanying documentation must be filed with the appropriate Service office in the United States with jurisdiction over your place of residence.

For U.S. citizen parents seeking a certificate of citizenship for a minor adopted or biological child who resides outside of the United States and qualifies for citizenship under section 322 of the INA, the Form

N-600 may be filed at any Service office or suboffice in the United States or its outlying possessions (including San Juan, Puerto Rico; the U.S. Virgin Islands; and Guam).

WHAT DOCUMENTS OR EVIDENCE MUST I SEND WITH THE APPLICATION?

The following is a list of documents that must be submitted with the N-600. Unless specifically noted otherwise, every applicant must submit each of the documents listed below for himself/herself and the U.S. citizen parent(s) (or grandparent(s) if applicable) through whom the applicant is claiming U.S. citizenship.

Any document in a foreign language must be accompanied by a translation in English. The translator must certify that he/she is competent to translate and that the translation is true and accurate. For each document needed, you may submit a clear, readable copy or the originals. Do not send an original Certificate of Citizenship or Certificate of Naturalization. The Service may request that you present original documents at the interview.

- **Photographs** – *(Only required of the person to whom the Certificate of Citizenship will be issued)*

  You must submit three identical, unglazed photographs taken within 30 days of the date of filing of this application. The photographs should be 2" x 2", and must be in natural color and taken without any headdress (unless the applicant is wearing a headdress as required by a religious order of which he or she is a member). The dimensions of the face should be about 1 inch from the top of the hair to the chin. The face should be a ¾ frontal view with the entire right ear visible. The photographs must be on thin paper with a light background and not mounted in any way. The photographs must not be signed but you should print your name (or if a U.S. citizen parent applying on behalf of a minor child, the child's name) and alien registration number in the center of the back of each photograph with a soft lead pencil.

- **Birth Certificate or Record** – A certified birth certificate or record issued by a civil authority in the country of birth.

- **Marriage Certificate(s)** – Certified marriage certificate(s) issued by a civil authority in the state or country of marriage.

- **Documents showing the termination of a marriage** – Examples include a divorce decree, death certificate, or annulment document.

- **Proof of U.S. citizenship** – Examples of this are birth certificates showing birth in the United States; an N-550, Certificate of Naturalization; an N-560, Certificate of Citizenship; an FS-240, Report of Birth Abroad of United States Citizen; or a valid unexpired U.S. passport.

- **Proof of Status as National of United States** – *(Only required for applicants claiming U.S. citizenship through a national of the United States, such as a person born in American Samoa or Swains Islands).*

- **Proof of Legitimation** – *(Only required for applicants who were born out of wedlock).*

  Documents must establish legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable).

- **Proof of Legal Custody** – *(Only required for applicants whose U.S. citizen parent(s) divorced and/or separated and for applicants who are adopted).*

- **Copy of Permanent Resident Card or Other Evidence of Lawful Permanent Resident Status** – *(Only required for applicants claiming U.S. citizenship through alien parent(s) who naturalized or claiming automatic acquisition of U.S. citizenship while under the age of 18 under section 320 of the INA)*

  Examples include a Form I-551 stamp in a foreign passport or Service-issued travel document.

- **Evidence of lawful admission and maintenance of such lawful status** (e.g. Form I-94, Arrival/Departure Record) – *(Only required for applicants seeking citizenship under section 322 of the INA).*

  Proof of required residence or physical presence in the United States – Any document that proves the U.S. citizen parent(s)' residence or physical presence in the United States. This proof may include but is not limited to the following:

  - School, employment, military records;
  - deeds, mortgages, leases showing residence;
  - attestations by churches, unions, or other organizations;

- affidavits of third parties having knowledge of the residence and physical presence.

- **Proof of U.S. citizen grandparent(s)' required physical presence in the United States** – *(Only required for applicants seeking citizenship under section 322 of the Act whose U.S. citizen parent(s) does not meet the physical presence requirement of 5 years in the United States, 2 years of which were after the age of 14).*

  Documentation establishing that the U.S. citizen grandparent(s) met the required physical presence requirements.

- **Copy of notice of approval of a Form I-600 Petition to Classify Orphan as an Immediate Relative, and supporting documentation for such form (except home study)** – *(Only required for adopted orphans applying under section 322 of the INA).*

- **Copy of full, final adoption decree** – *(Only required for adopted applicants).*

- **Evidence of all legal name changes**.

WHAT IF A DOCUMENT IS NOT AVAILABLE?

If it is not possible to obtain any one of the above-required documents, you must establish why the evidence is not available. You may be required to submit an original written statement from the relevant government or other authority explaining the reason for the unavailability of the document(s). You may submit the following secondary evidence for consideration. However, secondary documents that do not overcome the availability of primary documents may result in denial of the application:

- **Baptismal certificate:** A certificate under the seal of the church where the baptism occurred, showing the date and place of the child's birth, date of baptism, the names of the godparents, if known.

- **Church records:** A certificate under the church seal issued within two months of birth.

- **School record:** A letter from authorities of the school attended (preferably the first school), showing the date of admission to the school, the child's date of birth or age at that time, place of birth, and the names and places of birth of parents, if shown in the school records.

- **Census records:** State or federal census records showing the name(s) and place(s) of birth, and the date(s) of birth or age(s) of the person(s) listed.

- **Affidavits:** Written statements sworn (or affirmed) to by two persons who have personal knowledge of the claimed event (i.e., the date and place of a birth, marriage, or death). The persons may be relatives and need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his (her) full name and address; date and place of birth; relationship to the applicant, if any; full information concerning the event; and complete details concerning how he (she) acquired knowledge of the event.

HOW DO I COMPLETE THIS APPLICATION?

- Please print clearly or type your answers using CAPITAL letters in each box.

- Use black or blue ink.

- **If you have an INS "A" number, write your INS "A" number in the place indicated on the top right hand corner of the first page.** Use your INS "A" number on your Permanent Resident Card (formerly known as the Alien Registration Receipt or "Green" Card), if you have one. Otherwise, use the INS "A" number reflected on the Service-issued travel document. If the "A" number has fewer than 9 numbers, place enough zeros before the first number to make a *total of 9 numbers* on the application. For example, write card number A1234567 as A001234567, or write card number A12345678 as A012345678.

- If a question does not apply to you, write N/A (meaning "Not Applicable") in the space provided.

- If you need extra space to answer any item:

  - Attach a separate sheet of paper (or more sheets if needed);

  - Write your name, your "A" number (if available), and "N-600" on the top right corner of the sheet; and

  - Write the number of each question for which you are providing additional information.

STEP-BY-STEP INSTRUCTIONS

This form is divided into 12 parts. The information below will help you fill out the form.

Part 1. Information About You

The person seeking the certificate of citizenship should complete information in this section.

NOTE: If you are a U.S. citizen parent applying for a certificate of citizenship on behalf of your minor biological or adopted child, give information for your **minor child**.

A. **Current legal name** – Your current legal name is the name on your birth certificate unless it has been changed after birth by a legal action such as a marriage, adoption, or court order.

B. **Name exactly as it appears on your Permanent Resident Card** (if different from above) - Write your name exactly as it appears on the card, even if it is misspelled.

C. **Other names used since birth** – If you have ever used any other names since birth, write them in this section. If you need more space, use a separate sheet of paper.

D. **Social Security Number** – Print your Social Security number. If you do not have a Social Security number, write "N/A" in the space provided.

E. **Date of Birth** - Use eight numbers to show your date of birth (example: May 1, 1979, should be written 05/01/1979).

F. **Country of Birth** - Give the name of the country where you were born. Write the name of the country even if it no longer exists. If the name of the country has changed, write the name of the country as it was at the time of your birth.

G. **Country of Nationality** – Write the name of the country of your prior nationality. Write the name of the country where you are currently a citizen or national if you have filed an application to become a U.S. citizen (***section 322 applicants only***).

- If the country no longer exists and/or you are stateless, write the name of the country where you were last a citizen or national.
- If you are a citizen or national of more than one country, write the name of the foreign country that issued your last passport.

H. **Gender** – Indicate whether male or female.

I. **Height** – Give your height in feet and inches.

J. **Visible Scars, Marks, etc.** – Note any visible scars or other identifying mark you have.

Part 2. Information About Your Eligibility

Check the box in **Section A** which indicates why you are eligible for a certificate of citizenship.

If you are a U.S. citizen parent applying for a certificate of citizenship on behalf of a minor child, check the box in either **Section B or C**, indicating whether you are applying for an adopted or biological child.

If the basis for your eligibility is not described in any of the categories, check **Box D "Other"** and briefly write the basis for your application on the lines provided.

Part 3. Additional Information About You

The person seeking the certificate of citizenship should complete information in this section.

NOTE: If you are a U.S. citizen parent applying for a certificate of citizenship on behalf of your minor biological or adopted child, give information for your **minor child**.

A. **Home Address** – Give the address where you now live. Do NOT put post office (P.O.) box numbers here.

B. **Mailing Address** – If your mailing address is the same as the home address, write "same." If the mailing address is different from your home address, write it in this part. Provide "Care Of" information if applicable.

C. **Telephone Numbers** (Optional) – Telephone numbers and e-mail addresses allow the Service to contact you more quickly about your application. If you are hearing impaired and use a TTY

telephone connection, please indicate this by writing "(TTY)" after the telephone number.

D. Current Marital Status – Check the marital status you have on the date you are filing this application. If you are currently not married, but had a prior marriage that was annulled (declared by a court to be invalid) check "Other" and explain it.

E. Information About Your Entry Into the United States and Current Immigration Status –

1. Please provide information about where you entered the U.S.. Provide the name used when you entered and how you arrived in the United States.

2. Please provide information about what documents you presented to enter the United States. Provide your passport number and date of issuance, if known.

3. Please provide information about your immigration status on entry into the United States.

4. If you adjusted to lawful permanent resident status while in the United States, please provide the date you became a lawful permanent resident and place where such status was granted.

F. Previous Application for Certificate of Citizenship or U.S. Passport – If you previously applied for a certificate of citizenship or a U.S. passport (or you are a U.S. citizen parent who previously applied for a certificate of citizenship or U.S. passport for your minor child), indicate on a separate piece of paper what happened with the application and whether a certificate of citizenship or U.S. passport was or was not issued.

G. Information on Adoption – If you were adopted, provide information as to the place and date of adoption.

H. Re-adoption in the United States – Children who are admitted to the United States under section 101(b)(1)(F) of the INA as IR-4s (orphans coming to the United States to be adopted by U.S. citizen parent(s)) do not automatically acquire citizenship on entry, even though admitted as lawful permanent residents. Children admitted as IR-4s must have been finally adopted in the United States or had the foreign adoption recognized by the state where the child is permanently residing. If you had to be re-adopted in the United States before you could acquire citizenship automatically, provide the information requested.

I. Marital Status of Parents At Time of Birth (or Adoption) – Indicate whether your parents were married to each other at the time of your birth. If you were born out-of-wedlock, indicate "No", even if your parents subsequently married. If you were adopted, indicate whether your adoptive parents were married to each other at the time of your adoption.

If you are a U.S. citizen parent applying on behalf of a minor biological or adopted child, indicate whether you were married to the child's natural (or adoptive mother) at the time of your minor child's birth (or adoption). If your minor child was born out of wedlock, indicate "No", even if you subsequently married the child's other parent.

J. Absences from the United States – Provide the requested information for every trip that you have taken since you first arrived in the United States. Begin with the most recent trip.

Part 4. Information About Your U.S. Citizen Father (or Adoptive Father)

Information in this section should be completed if you are claiming citizenship through a U.S. citizen father (or adoptive father). If you are claiming citizenship solely through a U.S. citizen mother (or adoptive mother), **Go to Part 5**.

NOTE: If you are a U.S. citizen father (or adoptive father) applying for a certificate of citizenship on behalf of your minor child, where information is requested about "your U.S. citizen father", **provide information about YOURSELF in the sections noted**.

A. Current legal name – Give current legal name of your U.S. citizen father. It is the name on his birth certificate unless it was changed after birth by a legal action such as a marriage, adoption, or court order.

B. Date of Birth - Use eight numbers to show your U.S. citizen father's date of birth (example: May 1, 1979, should be written 05/01/1979).

C. Country of Birth - Give the name of the country where your U.S. citizen father was born. Write the name of the country even if it

no longer exists. If the name of the country has changed, write the name of the country as it was at the time of your U.S. citizen father's birth.

D. **Country of Nationality** – Write the name of the country where your U.S. citizen father is currently a citizen or national. If the country no longer exists and/or you are stateless, write the name of the country where your U.S. citizen father was last a citizen or national.

E. **Home Address** – Give the address where your U.S. citizen father now lives. Do NOT put post office (P.O.) box numbers here. If your U.S. citizen father is deceased, write "deceased" and provide the date of death.

F. **United States Citizenship** – Indicate how your U.S. citizen father became a U.S. citizen. Provide all the requested information.

G. **Loss of United States Citizenship** – Indicate whether your U.S. citizen father ever lost his U.S. citizenship. Provide this information even if your U.S. citizen father regained citizenship at a later date.

H. **Residence and/or Physical Presence** – Except for applicants who are claiming U.S. citizenship through the naturalization of an alien parent(s), provide all the dates when your U.S. citizen father was in United States. Dates should include all time immediately after birth as well as after the age of 14 and older.

I. **Marital History**

1. Write the number of times your U.S. citizen father was married. Include any annulled marriages. If he was married more than one time to the same spouse, count each time as a separate marriage.

2. If now married, provide information about your U.S. citizen father's current spouse. Check appropriate box to indicate her immigration status.

3. Indicate whether your U.S. citizen father's current spouse is also your parent. If "No", you will be asked to provide information about your father's previous spouse or spouses.

Part 5. Information About Your U.S. Citizen Mother (or Adoptive Mother)

Information in this section should be completed if you are claiming citizenship through a U.S. citizen mother (or adoptive mother).

NOTE: If you are a U.S. citizen mother (or adoptive mother) applying for a certificate of citizenship on behalf of your minor child, where information is requested about "your U.S. citizen mother", **provide information about YOURSELF in the sections noted**.

A. **Current legal name** – Give current legal name of your U.S. citizen mother. It is the name on her birth certificate unless it was changed after birth by a legal action such as a marriage, adoption, or court order.

B. **Date of Birth** - Use eight numbers to show your U.S. citizen mother's date of birth (example: May 1, 1979, should be written 05/01/1979).

C. **Country of Birth** - Give the name of the country where your U.S. citizen mother was born. Write the name of the country even if it no longer exists. If the name of the country has changed, write the name of the country as it was at the time of your U.S. citizen mother's birth.

D. **Country of Nationality** – Write the name of the country where your U.S. citizen mother is currently a citizen or national. If the country no longer exists and/or you are stateless, write the name of the country where your U.S. citizen mother was last a citizen or national.

E. **Home Address** – Give the address where your U.S. citizen mother now lives. Do NOT put post office (P.O.) box numbers here. If your U.S. citizen mother is deceased, write "deceased" and provide the date of death.

F. **United States Citizenship** – Indicate how your U.S. citizen mother became a U.S. citizen. Provide all the requested information.

G. **Loss of United States Citizenship** – Indicate whether your U.S. citizen mother ever lost her U.S. citizenship. Provide this information even if your U.S. citizen mother regained citizenship at a later date.

H. **Residence and/or Physical Presence** – Except for applicants who are claiming U.S. citizenship through the naturalization of an alien parent(s), provide all the dates when your U.S. citizen mother was in United States. Dates should include all time immediately after birth as well as after the age of 14 and older.

I. **Marital History**

1. Write the number of times your U.S. citizen mother was married. Include any annulled marriages. If she was married more than one time to the same spouse, count each time as a separate marriage.

2. If now married, provide information about your U.S. citizen mother's current spouse. Check appropriate box to indicate his immigration status.

3. Indicate whether your U.S. citizen mother's current spouse is also your parent. If "No", you will be asked to provide information about your mother's previous spouse or spouses.

Part 6. Information About Your U.S. Citizen Grandfather

This section ONLY applies to applicants for certificates of citizenship under section 322 of the INA (providing for citizenship through an application process for biological and adopted children who reside outside the United States and meet certain conditions while under the age of 18).

COMPLETE THIS SECTION ONLY IF:

1. Your are a U.S. citizen parent applying for citizenship on behalf of your adopted or biological child who resides outside the United States;

2. You, the U.S. citizen parent, **HAVE NOT** been physically present in the United States for 5 years, 2 years of which were after the age of 14; and

3. You, the U.S. citizen parent, are relying on the physical presence in the United States of your U.S. citizen father (the child's grandfather) to get citizenship for your adopted or biological child.

You, the U.S. citizen parent, should provide information about your U.S. citizen father in the sections noted.

A. **Current legal name** – Give current legal name of your U.S. citizen grandfather. It is the name on his birth certificate unless it was changed after birth by a legal action such as a marriage, adoption, or court order.

B. **Date of Birth** - Use eight numbers to show your U.S. citizen grandfather's date of birth (example: May 1, 1979, should be written 05/01/1979).

C. **Country of Birth** - Give the name of the country where your U.S. citizen grandfather was born. Write the name of the country even if it no longer exists. If the name of the country has changed, write the name of the country as it was at the time of your U.S. citizen grandfather's birth.

D. **Country of Nationality** – Write the name of the country where your U.S. citizen grandfather is currently a citizen or national. If the country no longer exists and/or you are stateless, write the name of the country where your U.S. citizen grandfather was last a citizen or national.

E. **Home Address** – Give the address where your U.S. citizen grandfather now lives. Do NOT put post office (P.O.) box numbers here. If your U.S. citizen grandfather is deceased, write "deceased" and provide the date of death.

F. **United States Citizenship** – Indicate how your U.S. citizen grandfather became a U.S. citizen. Provide all the requested information.

G. **Loss of United States Citizenship** – Indicate whether your U.S. citizen grandfather ever lost his U.S. citizenship. Provide this information even if your U.S. citizen grandfather regained citizenship at a later date.

H. **Residence and/or Physical Presence** – Provide all the dates when your U.S. citizen grandfather was in United States. Dates should include all time immediately after birth as well as after the age of 14 and older.

Part 7. Information About Your U.S. Citizen Grandmother

This section ONLY applies to applicants for certificates of citizenship under section 322 of the INA (providing for citizenship through an application process for biological and adopted children who reside outside the United States and meet certain conditions while under the age of 18).

COMPLETE THIS SECTION ONLY IF:

1. Your are a U.S. citizen parent applying for citizenship on behalf of your adopted or biological child who resides outside the United States;

2. You, the U.S. citizen parent, **HAVE NOT** been physically present in the United States for 5 years, 2 years of which were after the age of 14; and

3. You, the U.S. citizen parent, are relying on the physical presence in the United States of your U.S. citizen mother (the child's grandmother) to get citizenship for your adopted or biological child.

You, the U.S. citizen parent, should provide information about your U.S. citizen mother in the sections noted.

A. **Current legal name** – Give current legal name of your U.S. citizen grandmother. It is the name on her birth certificate unless it was changed after birth by a legal action such as a marriage, adoption, or court order.

B. **Date of Birth** - Use eight numbers to show your U.S. citizen grandmother's date of birth (example: May 1, 1979, should be written 05/01/1979).

C. **Country of Birth** - Give the name of the country where your U.S. citizen grandmother was born. Write the name of the country even if it no longer exists. If the name of the country has changed, write the name of the country as it was at the time of your U.S. citizen grandmother's birth.

D. **Country of Nationality** – Write the name of the country where your U.S. citizen grandmother is currently a citizen or national. If the country no longer exists and/or you are stateless, write the name of the country where your U.S. citizen grandmother was last a citizen or national.

E. **Home Address** – Give the address where your U.S. citizen grandmother now lives. Do NOT put post office (P.O.) box numbers here. If your U.S. citizen grandmother is deceased, write "deceased" and provide the date of death.

F. **United States Citizenship** – Indicate how your U.S. citizen grandmother became a U.S. citizen. Provide all the requested information.

G. **Loss of United States Citizenship** – Indicate whether your U.S. citizen grandmother ever lost her U.S. citizenship. Provide this information even if your U.S. citizen grandmother regained citizenship at a later date.

H. **Residence and/or Physical Presence** – Provide all the dates when your U.S. citizen grandmother was in United States. Dates should include all time immediately after birth as well as after the age of 14 and older.

Part 8. Information About Military Service of U.S. Citizen Parent – *(If Applicable)*

Provide requested information if either U.S. citizen parent served in the U.S. Armed Forces. Also indicate whether he or she was honorably discharged from service.

Part 9. Your Signature

If you are over the age of 18 and you are filing this application for yourself, you must sign and date the application. If you do not sign the application, the Service will return the application to you.

If you are under the age of 18 and your U.S. citizen parent or legal guardian is filing the application on your behalf, your U.S. citizen parent or legal guardian must sign and date the application. If your U.S. citizen parent or legal guardian does not sign the application, the application will be returned.

Part 10. Signature of Person Preparing Form If Other Than Applicant

If you do not fill out the Form N-600 yourself, the preparer must also sign, date, and give his or her address. If the preparer is a business or organization, its' name must be included on the form.

Part 11. Affidavit

DO NOT COMPLETE THIS PART. You will be asked to complete this part at the interview.

Part 12. Officer Report and Recommendation

DO NOT COMPLETE THIS PART. For INS use only.

PENALTIES

INS wants to make sure that you receive the requested immigration benefit if you are eligible for it. To do this, we may ask for more evidence, interview you, and/or conduct an investigation. **If you give us false documents, misrepresent facts, or otherwise engage in fraud, INS will take appropriate action**. This means we will not only deny your application, but you may lose current and future immigration benefits and you may face penalties including criminal and/or civil prosecution leading to fines and/or imprisonment.

PRIVACY ACT NOTICE

INS will use the information and evidence requested on Form N-600 to determine your eligibility for the requested immigration benefit. We may provide information from your application to other government agencies.

PAPERWORK REDUCTION ACT NOTICE.

You are not required to respond to this form unless it displays a currently valid OMB control number. INS strives to create forms and instructions that are accurate, easy to understand and impose the least possible burden on you to provide the information and evidence needed to process your application.

For this application we estimate that it takes 15 minutes to learn about the law, form, and process. The time it takes to complete the form is estimated at 20 minutes and 1 hour to assemble and file the application, including average travel time. The total preparation time is estimated at 1 hours and 35 minutes. If you have comments about this estimate or suggestions for simplifying this form, write to:

Immigration and Naturalization Service
HQPDI
425 "I" Street, N.W., Room 4034
Washington, D.C. 20536;
OMB No. 1115-0018

DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0018

Application for Certificate of Citizenship

Print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Use black or blue ink.

Part 1. Information About You *(Provide information about yourself, if you are the person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your minor child,* ***provide information about your child.****)*

Write Your INS "A" Number Here:
A _ _ _ _ _ _ _ _ _

A. Current legal name.

Family Name (*Last Name*)

Given Name (*First Name*) Full Middle Name (*If Applicable*)

B. Name exactly as it appears on your Permanent Resident Card (*If Applicable*).

Family Name (*Last Name*)

Given Name (*First Name*) Full Middle Name (*If Applicable*)

C. Other names used since birth.

Family Name (*Last Name*)	Given Name (*First Name*)	Middle Name (*If Applicable*)

D. Social Security Number (*If Applicable*) - -

E. Date of Birth (*Month/Day/Year*) / /

F. Country of Birth

G. Country of Nationality

H. Gender Male ☐ Female ☐

I. Height

J. Visible Scars, Marks, Etc.

FOR INS USE ONLY

Bar Code	Date Stamp

Remarks

Action

Part 2. Information About Your Eligibility (*Check Only One*)

A. I am claiming United States citizenship through:

☐ A United States citizen father.

☐ A United States citizen mother.

☐ Both United States citizen parents.

☐ A United States citizen adoptive parent(s).

☐ An alien parent(s) who naturalized.

☐ A United States citizen husband based on a marriage before September 22, 1922.

B. ☐ **I am a United States citizen parent applying for citizenship on behalf of my minor (under 18 years) BIOLOGICAL child.**

C. ☐ **I am a United States citizen parent applying for citizenship on behalf of my minor (under 18 years) ADOPTED child.**

D. ☐ **Other** (*Please explain fully*) _____

Part 3. Additional Information About You *(Provide additional information about yourself, if you are the person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your minor child,* ***provide the additional information about your minor child****).*

A. Home Address – Street Number and Name *(Do NOT Write a P.O. Box in This Space)* Apartment Number

City County State or Province Country Zip Code

B. Mailing Address – Street Number and Name *(If Different From Home Address)* Apartment Number

City County State or Province Country Zip Code

C. Daytime Phone Number *(If Any)* Evening Phone Number *(If Any)* E-Mail Address *(If Any)*

( ) ( )

D. Marital Status

☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed

☐ Marriage Annulled or Other *(Explain)*_____

E. Information about entry into the United States and current immigration status

1. I arrived in the following manner:

Port of Entry *(City/State)* Date of Entry *(Month/Day/Year)* Mode of Entry *(Plane/Car/Boat/etc.)*

Exact Name Used at Time of Entry:

2. I used the following travel document to enter:

☐ Passport

Passport Number Country Issuing Passport Date Passport Issued *(Month/Day/Year)*

/ /

☐ Other *(Please Specify Name of Document and Dates of Issuance)*_____

3. I entered as:

☐ An immigrant (lawful permanent resident) using an immigrant visa

☐ A nonimmigrant

☐ A refugee

☐ Other *(Explain)*_____

4. I obtained lawful permanent resident status through adjustment of status *(If Applicable)*:

Date You Became a Permanent Resident *(Month/Day/Year)* INS Office Where Granted Adjustment of Status

F. **Have you previously applied for a certificate of citizenship or United States passport?** ☐ No ☐ Yes *(Attach Explanation)*_____

Part 3. Additional Information About You *(Provide additional information about yourself, if you are the person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your minor child, provide the additional information about your minor child)* - ***Continued***

G. Were you adopted? ☐ No ☐ Yes (*Please complete the following information*):

Date of Adoption (*Month/Day/Year*) _____ Place of Final Adoption (*City/State or Country*) _____

Date Legal Custody Began (*Month/Day/Year*) _____ Date Physical Custody Began (*Month/Day/Year*) _____

H. Did you have to be re-adopted in the United States? ☐ No ☐ Yes *(Please complete the following information):*

Date of Final Adoption (*Month/Day/Year*) _____ Place of Final Adoption (*City/State*) _____

Date Legal Custody Began (*Month/Day/Year*) _____ Date Physical Custody Began (*Month/Day/Year*) _____

I. Were your parents married to each other when you were born (or adopted)? ☐ No ☐ Yes

J. Have you been absent from the United States since you first arrived? ☐ No ☐ Yes

If yes, please complete the following information about all absences, beginning with your most recent trip. If you need more space, use a separate sheet of paper.

Date You Left the United States (*Month/Day/Year*)	**Date You Returned to the United States** (*Month/Day/Year*)	**Place of Entry Upon Return to United States**

Part 4. Information About United States Citizen Father (or Adoptive Father) – *(Complete this section if you are claiming citizenship through a United States citizen father. If you are a United States citizen father applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about YOURSELF below).*

A. Current legal name of United States citizen father.

Family Name (*Last Name*) _____ Given Name (*First Name*) _____ Full Middle Name (*If Applicable*) _____

B. Date of Birth (***Month/Day/Year***) _____ **C. Country of Birth** _____ **D. Country of Nationality** _____

E. Home Address – Street Number and Name (*If Deceased, So State & Enter Date of Death*) _____ Apartment Number _____

City _____ County _____ State or Province _____ Country _____ Zip Code _____

Part 4. Information About Your United States Citizen Father (or Adoptive Father) - *(Complete this section if you are claiming citizenship through a United States citizen father (or adoptive father). If you are a United States citizen father applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about YOURSELF below)* - ***Continued***

F. United States citizen by:

☐ Birth in the United States

☐ Naturalization

Date of Naturalization (*Month/Day/Year*) _____ Place of Naturalization (*Name of Court & City/State or INS Office Location*) _____

Certificate of Naturalization No. _____ Former "A" Number (*If Known*) _____

☐ Through birth abroad to United States citizen parent(s)

☐ Acquired after birth through naturalization of alien parent(s)

G. Has your father ever lost United States citizenship or taken any action that would cause loss of United States citizenship?

☐ No ☐ Yes (*Please Provide Full Explanation*)

H. Dates of Residence and/or Physical Presence in the United States

Provide the dates your U.S. citizen father resided in or was physically present in the United States. If you need more space, use a separate sheet of paper.

From (Month/Day/Year)	**To** (Month/Day/Year)

I. Marital History

1. How many times has your U.S. citizen father been married (including annulled marriages)? ☐

2. Information about U.S. citizen father's **current spouse**:

Family Name (*Last Name*) _____ Given Name (First Name) _____ Full Middle Name (*If Applicable*) _____

Date of Birth (*Month/Day/Year*) _____ Country of Birth _____ Country of Nationality _____

Home Address – Street Number and Name _____ Apartment Number _____

City _____ County _____ State or Province _____ Country _____ Zip Code _____

Date of Marriage (*Month/Day/Year*) _____ Place of Marriage (*City/State or Country*) _____

Spouse's Immigration Status:

☐ United States Citizen ☐ Lawful Permanent Resident ☐ Other (*Explain*) _____

3. Is your U.S. citizen father's current spouse also your mother? ☐ No ☐ Yes

Part 5. Information About Your United States Citizen Mother (or Adoptive Mother) - *(Complete this section if you are claiming citizenship through a United States citizen mother (or adoptive mother). If you are a United States citizen mother applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about YOURSELF below).*

A. Current legal name of United States citizen mother .

Family Name (*Last Name*) | Given Name (*First Name*) | Full Middle Name (*If Applicable*)

B. Date of Birth (***Month/Day/Year***) | **C. Country of Birth** | **D. Country of Nationality**

E. Home Address – Street Number and Name (*If Deceased, So State & Enter Date of Death*) | Apartment Number

City | County | State or Province | Country | Zip Code

F. United States citizen by:

☐ Birth in the United States

☐ Naturalization

Date of Naturalization (*Month/Day/Year*) | Place of Naturalization (*Name of Court & City/State or INS Office Location*)

Certificate of Naturalization No. | Former "A" Number (*If Known*)

☐ Through birth abroad to United States citizen parent(s)

☐ Acquired after birth through naturalization of alien parent(s)

G. Has your mother ever lost United States citizenship or taken any action that would cause loss of United States citizenship?

☐ No ☐ Yes (*Please Provide Full Explanation*)

H. Dates of Residence and/or Physical Presence in the United States

Provide the dates that your U.S. citizen mother resided in or was physically present in the United States. If you need more space, use a separate sheet of paper.

From (Month/Day/Year)	**To** (Month/Day/Year)

I. Marital History

1. How many times has your U.S. citizen mother been married (including annulled marriages)?

2. Information about your U.S. citizen mother's **current spouse**:

Family Name (*Last Name*) | Given Name (*First Name*) | Full Middle Name (*If Applicable*)

Date of Birth (*Month/Day/Year*) | Country of Birth | Country of Nationality

Part 5. Information About Your United States Citizen Mother (or Adoptive Mother) - *(Complete this section if you are claiming citizenship through a United States citizen mother (or adoptive mother). If you are a United States citizen mother applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about YOURSELF below)* - ***Continued***

Home Address – Street Number and Name

Apartment Number

City | County | State or Province | Country | Zip Code

Date of Marriage (*Month/Day/Year*)

Place of Marriage (*City/State or Country*)

Spouse's Immigration Status:

☐ United States Citizen ☐ Lawful Permanent Resident ☐ Other (*Explain*) _____

3. Is your U.S. citizen mother's current spouse also your father? ☐ No ☐ Yes

Part 6. Information About Your United States Citizen Grandfather – *(Complete this section **ONLY** if you are a U.S. citizen parent (or adoptive parent) applying for a Certificate of Citizenship for your biological or adopted child and you **HAVE NOT** been physically present in the United States for 5 years, 2 years of which were after the age of 14. You, the U.S. citizen parent, provide information below about your U.S. citizen father (who is the U.S. citizen "grandfather" of your minor child)*

A. Current legal name of United States citizen grandfather.

Family Name (*Last Name*)

Given Name (*First Name*)

Full Middle Name (*If Applicable*)

B. Date of Birth (*Month/Day/Year*)

C. Country of Birth

D. Country of Nationality

E. United States citizen by:

☐ Birth in the United States

☐ Naturalization

Date of Naturalization (*Month/Day/Year*)

Place of Naturalization (*Name of Court & City/State or INS Office Location*)

Certificate of Naturalization No.

Former "A" Number (*If Known*)

☐ Through birth abroad to United States citizen parent(s)

☐ Acquired after birth through naturalization of alien parent(s)

F. Has your grandfather ever lost United States citizenship or taken any action that would cause loss of United States citizenship?

☐ No ☐ Yes (*Please Provide Full Explanation*)

Part 6. Information About Your United States Citizen Grandfather - *Continued*

G. Dates of Residence and/or Physical Presence in the United States

Provide the dates that your U.S. citizen grandfather lived in the United States. If you need more space, use a separate sheet of paper.

From (Month/Day/Year)	**To** (Month/Day/Year)

Part 7. Information About Your United States Citizen Grandmother – *(Complete this section **ONLY** if you are a U.S. citizen parent (or adoptive parent) applying for a Certificate of Citizenship for your biological or adopted child and you **HAVE NOT** been physically present in the United States for 5 years, 2 years of which were after the age of 14. You, the U.S. citizen parent, provide information below about your U.S. citizen mother (who is the U.S. citizen "grandmother" of your minor child).*

A. Current legal name of United States citizen grandmother.

Family Name (*Last Name*) _____ Given Name (*First Name*) _____ Full Middle Name (*If Applicable*) _____

B. Date of Birth (*Month/Day/Year*) _____ **C. Country of Birth** _____ **D. Country of Nationality** _____

E. United States citizen by:

☐ Birth in the United States

☐ Naturalization

Date of Naturalization (*Month/Day/Year*) _____ Place of Naturalization (*Name of Court & City/State or INS Office Location*) _____

Certificate of Naturalization No. _____ Former "A" Number (*If Known*) _____

☐ Through birth abroad to United States citizen parent(s)

☐ Acquired after birth through naturalization of alien parent(s)

F. Has your grandmother ever lost United States citizenship or taken any action that would cause loss of United States citizenship?

☐ No ☐ Yes (*Please Provide Full Explanation*)

G. Dates of Residence and/or Physical Presence in the United States

Provide the dates that your U.S. citizen grandmother resided in or was physically present in the United States. If you need more space, use a separate sheet of paper.

From (Month/Day/Year)	**To** (Month/Day/Year)

Part 8. Information About Military Service of United States Citizen Parent(s) – *(If Applicable)*

Has Your United States Citizen Parent(s) Served in the Armed Forces? ☐ No ☐ Yes

☐ United States Citizen Father ☐ United States Citizen Mother

Dates of Service (*Month/Day/Year* to *Month/Day/Year*)

TO

Discharge Was: ☐ Honorable ☐ Other Than Honorable ☐ Dishonorable

Part 9. Signature

I certify, under penalty of perjury under the laws of the United States, that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records that the INS needs to determine eligibility for the benefit I am seeking.

Applicant's Signature | Print Name | Date (*Month/Day/Year*)

Part 10. Signature of Person Preparing This Form If Other Than Above

I declare that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above-named person in response to the questions contained on this form.

Preparer's Printed Name | Preparer's Signature

Name of Business/Organization(*If Applicable*) | Preparer's Daytime Phone Number | Date (*Month/Day/Year*)

Preparer's Address – Street Number and Name

City | County | State | Zip Code

DO NOT COMPLETE THE FOLLOWING PARTS UNLESS INS OFFICER INSTRUCTS YOU TO DO SO AT THE INTERVIEW

Part 11. Affidavit

I, the (applicant, parent, or legal guardian) _____ do swear or affirm, under penalty of perjury laws of the United States, that I know and understand the contents of this application signed by me, and the attached supplementary pages number ( ) to ( ) inclusive; that the same are true and correct to the best of my knowledge, and that corrections number ( ) to ( ) were made by me or at my request.

Signature of parent, guardian, or applicant | Date *(Month/Day/Year)*

Subscribed and sworn or affirmed before me upon examination of the applicant (parent, guardian) on _____ at _____.

Signature of Interviewing Officer | Title

Part 12. Officer Report and Recommendation on Application for Certificate of Citizenship

On the basis of the documents, records, and the testimony of persons examined, and the identification upon personal appearance of the underage beneficiary, I find that all the facts and conclusions set forth under oath in this application are _____ true and correct; that the applicant did _____ derive or acquire United States citizenship on _____ (*month/day/year*), through (*mark "X" in appropriate section of law or, if section of law not reflected, insert applicable section of law in "Other" block*): **section 301 of the INA**_____; **section 309 of the INA** ____; **section 320 of the INA** ____; **section 321 of the INA** ____; **section 322 of the INA** ____; **section 322 of the INA (grandparent residence);** ____; **Other** _____

and that (s)he _____ (*has/has not*) been expatriated since that time, I recommend that this application be _____ (*granted or denied*) and that _____ (*A or AA*) Certificate of Citizenship ____ be issued in the name of _____.

District Adjudication Officer's Name and Title

District Adjudication Officer's Signature

I do _____ concur in recommendation of the application.

Date: _____
(Month/Day/Year)

District Director or Officer-in-Charge Signature

[FR Doc. 01–14855 Filed 6–12–01; 8:45 am]
BILLING CODE 4410–10–C

Federal Register

Wednesday,
June 13, 2001

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Inviting Applications for Fiscal Year (FY) 2001 for New Awards for the Alternative Financing Program and a Pre-Application Meeting; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.224C]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for Fiscal Year (FY) 2001 for New Awards for the Alternative Financing Program and a Pre-Application Meeting

ACTION: Notice inviting applications for fiscal year (FY) 2001 for new awards for the Alternative Financing Program and a pre-application meeting.

SUMMARY: We invite applications for new grant awards for FY 2001 for the Alternative Financing Program authorized under title III of the Assistive Technology Act of 1998 (AT Act).

Purpose of the Program: The Alternative Financing Program (AFP) created a new Federal program to pay a share of the cost of the establishment or expansion, and administration of, an alternative financing program for assistive technology (AT). We take this action in order to award one year grants or cooperative agreements to States and outlying areas to establish or maintain alternative financing projects to increase access AT for individuals with disabilities. Currently, major service programs such as Medicaid, special education, vocational rehabilitation, and to a limited extent, Medicare, provide AT devices and services for eligible individuals. In some instances, individuals with disabilities purchase AT with private funds however, many individuals and their families do not have the necessary resources to obtain the AT they need. Loan programs offer individuals with disabilities attractive options that significantly enhance their access to AT.

This competition focuses on projects designed to meet a priority that we have chosen from allowable activities specified in the program statute (see 34 CFR 75.105(b)(2)(v)) and sections 301–305 of the Assistive Technology Act of 1998 (29 U.S.C. 3051–3055).

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Deadline for Transmittal of Applications: August 14, 2001.

Application Available: June 15, 2001.

Project Period: 12 months.

Estimated Number of Awards: 20.

Award Amount: Program minimum: none; Program maximum: none.

Note: The total amount available in FY 2001 for the AFP is $14.7 million. We are no longer required to award a minimum of $500,000 to States, outlying areas are no longer restricted to a maximum of $105,000, nor are we required to distribute any remaining funds among those States based on population and density. In order for NIDRR to have increased flexibility and to insure a greater number of funding options within the total allocation for this program, NIDRR encourages applicants to submit and clearly identify in the application, multiple and alternative budgets. Applicants should include the required matching funds and the necessary materials for each of the different amounts proposed.

Matching Requirement: The Federal share of the cost of the Alternative Financing Program must not be more than 75 percent. Therefore, applicants must match at least 25 percent of the total program cost. A State is no longer required to receive a minimum award of $500,000; an outlying area is no longer restricted to a maximum award of $105,000. The State or outlying area must provide the non-Federal share of the cost of the AFP in cash, from State, local, or private sources.

Background

Technical Assistance: In FY 2000, NIDRR funded a technical assistance project to provide information and technical assistance to States and outlying areas including assistance in preparing applications for grants under this Act. Applicants are encouraged to contact RESNA at 703–524–6686 ext. 301 or through e-mail; *nmeidenbauer@resna.org* for assistance with their applications.

Eligible Applicants: Parties eligible to apply for the AFP are States and outlying areas that receive or have received grants under the AT State Grant Program (section 101 of the AT Act).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 81, 82, 85, and 86.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities for the AFP and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on July 10, 2001. You may attend either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12 noon. NIDRR staff will also be available at this location from 1:30 p.m. to 4:00 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3414, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–5880. If you use a telecommunication device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.,* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Priority

Under 34 CFR 75.105(c)(3) and sections 301–305 of title III of the AT Act, we consider only applications that meet the priority. We will establish the AFP in order to provide assistance to States and to outlying areas so that individuals with disabilities of all ages and their family members, guardians, advocates, and authorized representatives will have increased access to funding for AT devices and services through alternative financing mechanisms (loans). Consistent with sections 301–305 of the Act, the requirements are as follows:

(a) Each grantee must enter into a contract with a community-based organization (including a group of such organizations), such as Centers for Independent Living, that has individuals with disabilities involved in organizational decision making at all organizational levels, to administer the alternative-financing program. The contract must: (1) Include a provision requiring that the program funds, including the Federal and non-Federal

shares of the cost of the program, be administered in a manner consistent with the provisions of this title; (2) include provisions for oversight and evaluation to protect Federal financial interests; and (3) require the community-based organization to enter into a contract with a commercial lending institution or State or outlying area financing agency.

(b) Each grantee and any community-based organization that enters into a contract with the State or outlying area, must submit, 12 months after receipt of the fiscal year 2001 award, each of the following policies, procedures, data, and information: (1) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the project; (2) a policy and procedure to assure that access to the AFP shall be given to consumers regardless of type of disability, age, income level, location of residence in the State or outlying area, or type of AT device or AT service for which financing is requested through the program; and (3) a procedure to assure consumer-controlled oversight of the program.

(c) Each grantee must provide the following information: (1) The ratio of funds provided by the State for the AFP to funds provided by the Federal Government; (2) the type of alternative financing mechanism used and the community-based organization with which the State or outlying area entered into a contract; (3) the following information concerning each disabled individual served by the project: The amount of assistance, type of AT device or AT service financed through the project, type of disability, age, gender, race, ethnicity, socioeconomic status, primary language, geographic location within the State or outlying area, employment status, whether the consumer is part of an underrepresented population or rural population, and whether the consumer tried to secure financial support from other sources and, if so, a description of those sources.

(d) Each grantee must provide one or a combination of the following: (1) A low-interest loan fund; (2) an interest buy-down program; (3) a revolving loan fund; (4) a loan guarantee or insurance program; (5) a program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or AT services; or (6) another mechanism that meets the requirements of this program and is described in an application, peer reviewed and approved by the Department.

(e) Each grantee must provide matching funds so that the Federal share of the cost of the AFP is not more than 75 percent. A State is no longer required to receive a minimum award of $500,000; an outlying area is no longer restricted to a maximum award of $105,000; the State or outlying area match must be at least 25 percent of the total program cost.

(f) Each applicant must provide the following assurances in its application: (1) The State or outlying area will provide the non-Federal share of the cost of the AFP in cash, from State, local, or private sources; (2) the State or outlying area will continue the AFP after Federal funding has terminated on a permanent basis; (3) the State or outlying area will provide information describing the manner in which, the program will expand and emphasize consumer choice and control; (4) the State or outlying area will supplement and not supplant other Federal, State, and local public funds expended to provide any currently operating AFP in the State or outlying area. The State or outlying area must use new State-level or outlying area-level funds to match the Federal share. The State or outlying area may not use existing spending, such as Title I AT Act funds, that are used to support an existing AFP, to match the Federal grant; (5) the State or outlying area will place all funds that support the AFP, including funds repaid during the life of the program, in a permanent separate account, apart from any other fund; (6) the State's or outlying area's community-based organization will invest funds in low-risk securities in which a regulated insurance company may invest under the law of the State or the outlying area if the organization administering funds invests funds within this account; (7) the State's or outlying area's community-based organization will administer the funds with the same judgement and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of such person; (8) funds comprised of the principal and interest from the State or outlying area account for this activity will be available to support the AFP; (9) any interest or investment income that accrues on or derives from such funds after such funds have been placed under the control of the organization administering the AFP, but before those funds are distributed for purposes of supporting the program, will be the property of the organization administering the program; and (10) the State or outlying area will limit the indirect costs of the total amount available for the AFP to 10 percent, including both the Federal and State or outlying area funds.

In addition, the project must:

(a) Provide in accessible formats materials that can be used by potential loan applicants and lending institutions to obtain, share and disseminate information on loan availability, eligibility requirements and procedures and general loan related updates;

(b) Coordinate and share information, resources and with the State and outlying area AT Act projects; and

(c) Conduct and submit to NIDRR and the AFTAP an annual evaluation of its activities using the data collection instrument developed by the Alternative Financing Technical Assistance Project.

Selection criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 75.210. The maximum score for all criteria is 100 points. The selection criteria to be used for this competition will be provided in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments 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.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Alternative Financing Program—CFDA 84.224C is one of the programs included in the pilot project. If you are an applicant under the Alternative Financing Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its

success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Alternative Financing Program at: http://e-grants.ed.gov.

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.224C.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov.

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

Electronic Access to This Document

You may review 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 the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., 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://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 3051–3058.

Dated: June 7, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–14809 Filed 6–12–01; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
June 13, 2001

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 et al.

Medicare Program; Provisions of the Benefits Improvement and Protection Act of 2000; Inpatient Payments and Rates and Costs of Graduate Medical Education; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 412, 413, and 485

[HCFA–1178–IFC]

RIN 0938–AK74

Medicare Program; Provisions of the Benefits Improvement and Protection Act of 2000; Inpatient Payments and Rates and Costs of Graduate Medical Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements, or conforms the regulations to, certain statutory provisions relating to Medicare payments to hospitals for inpatient services that are contained in the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Benefits Improvement and Protection Act of 2000 (BIPA).

Many of the provisions of BIPA modify changes to the Social Security Act made by the Balanced Budget Refinement Act of 1999 or the Balanced Budget Act of 1997 or both. Some of the provisions of BIPA have effective dates that are prior to its passage on December 21, 2000.

DATES: *Effective Date:* This interim final rule with comment period is effective on June 13, 2001.

Comment Period: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 13, 2001.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1178–IFC, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by hand or courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1178–IFC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in the Department's offices at 7500 Security Boulevard, Baltimore, MD on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (410) 786–9994).

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke HCFA–1178–IFC; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt Herron, HCFA–1178–IFC, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT:

Steve Phillips, (410) 786–4548, Operating Prospective Payment, Sole Community Hospitals, Disproportionate Share Hospitals and Medicare-Dependent, Small Rural Hospitals.

Tzvi Hefter, (410) 786–4487, Excluded Hospitals, Graduate Medical Education, and Critical Access Hospital Issues.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background: Program Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs). Payment for cases within each DRG is weighted to account for the average resources used to treat patients within that DRG. In addition, these payments are adjusted by a wage index (and a geographic adjustment factor derived from the wage index in the case of capital payments) to account for the varying costs of labor across areas, and by separate adjustment factors for the additional indirect operating costs associated with medical education (IME) and for treating a disproportionate share of low-income patients.

Certain specialty hospitals are excluded from the prospective payment system. Under section 1886(d)(1)(B) of the Act, the following classes of hospitals and hospital units are excluded from the prospective payment system: psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under sections 1820 and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR Parts 413 and 415.

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance

with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's costs per resident in a base year and the hospital's number of residents in that cost reporting period.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals and hospital units and the regulations governing direct GME are located in 42 CFR Part 413. The regulations governing CAHs are located in 42 CFR Parts 413 and 485.

II. Provisions of the Interim Final Rule With Comment Period

On December 21, 2000 the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) was enacted. Public Law 106–554 made a number of changes to the Act affecting Medicare payments to hospitals for inpatient services. Many of the provisions of Public Law 106–554 are modifications to provisions of the Act included in the Balanced Budget Act of 1997 (Pub. L. 105–33) or the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) or both. Some of the provisions of Pub. L. 106–554 have effective dates that are prior to its passage on December 21, 2000. Other provisions do not become effective until April 1, 2001 or later.

The following chart is a summary of the effective dates of the policy changes we are implementing in this interim final rule with comment period as a result of Public Law 106–554. The individual changes are summarized below.

EFFECTIVE DATE OF THE PROVISIONS OF PUBLIC LAW 106–554 INCLUDED IN THIS INTERIM FINAL RULE WITH COMMENT PERIOD

Section No.	Title	Effective date
201	Clarification of No Beneficiary Cost-Sharing for Clinical Diagnostic Laboratory Test Furnished by Critical Access Hospitals.	11/29/1999
202	Assistance with Fee Schedule Payment for Professional Services under All-Inclusive Rate	07/01/2001
211	Treatment of Rural Disproportionate Share Hospitals	04/01/2001
212	Option to Base Eligibility for Medicare-Dependent, Small Rural Hospital Program on Discharges during Two of the Three Most Recently Audited Cost Reporting Periods.	04/01/2001
213	Extension of Option to use Rebased Target Amounts to All Sole Community Hospitals	10/01/2000
301	Revision of Acute Care Hospital Payment Update for 2001	04/01/2001
302	Additional Modification in Transition for Indirect Medical Education Adjustment	04/01/2001
303	Decrease in Reductions for Disproportionate Share Hospitals	04/01/2000
306	Payment for Inpatient Services of Psychiatric Hospitals	10/01/2000
307	Payment for Inpatient Services of Long-Term Care Hospitals	10/01/2000
512	Change in Distribution Formula for Medicare+Choice-Related Nursing and Allied Health Education Costs.	01/01/2001
541	Increase in Reimbursement for Bad Debt	10/01/2000

The following is a summary of the policy changes we are implementing in this interim final rule with comment period as a result of Public Law 106–554:

A. Changes Relating to Payments for Operating Costs Under the Hospital Inpatient Prospective Payment System

• *Treatment of Rural and Small Urban Disproportionate Share Hospitals (DSH).* We are implementing the provisions of section 211 of Public Law 106–554 which lowers thresholds by which certain classes of hospitals qualify for DSH, with repsect to discharges occurring on or after April 1, 2001.

• *Decrease in Reductions for Disproportionate Share Hospital Payments.* We are implementing section 303 of Public Law 106–554 which modifies the previous reduction in the DSH payment to be 2 percent in FY 2001 and 3 percent in FY 2002.

• *Medicare-Dependent, Small Rural Hospitals (MDH).* We are implementing section 212 of Public Law 106–554 which provides an option to base eligibility for MDH status on discharges during two of the three most recently audited cost reporting periods, effective with cost reporting periods beginning on or after April 1, 2001.

• *Revision of Prospective Payment System Standardized Amounts.* We are implementing section 301 of Public Law 106–554 which revises the update factor increase for the inpatient prospective payment rates for FY 2001.

• *Indirect Medical Education Adjustment (IME).* We are implementing section 302 of Public Law 106–554 which provides that for the purposes of making the IME payment, the formula multiplier, or '*c*', for discharges occurring on or after April 1, 2001 and before October 1, 2001 will be determined as if '*c*' equaled 1.66, rather than 1.54.

• *Sole Community Hospitals (SCHs).* We are implementing section 213 of Public Law 106–554 which further extends the 1996 rebasing option, for hospital cost reporting periods beginning October 1, 2000, to all SCHs and provides that this extension is effective as if it had been included in section 405 of Public Law 106–113.

B. Payments for Nursing and Allied Health Education: Utilization of Medicare+Choice Enrollees

We are implementing section 512 of Public Law 106–554 which revised the formula for determining the additional payment amounts to hospitals for Medicare+Choice nursing and allied health education costs.

C. Changes Relating to Payments for Capital-Related Costs Under the Hospital Inpatient Prospective Payment System

As a result of implementing section 301 of Public Law 106–554, which provides increased inpatient operating payment rates, the unified outlier threshold for inpatient operating and inpatient capital-related costs was recalculated. Therefore, we are revising the capital outlier offset which also requires us to revise the capital-related rates.

D. Changes Relating to Hospitals and Hospital Units Excluded from the Prospective Payment System

• *Increase in the Incentive Payment for Excluded Psychiatric Hospitals and Units.* We are implementing section 306 of Public Law 106–554, which provides

that for cost reporting periods beginning on or after October 1, 2000, for psychiatric hospitals and units, if the allowable net inpatient operating costs do not exceed the hospital's ceiling, payment is the lower of: (1) Net inpatient operating costs plus 15 percent of the difference between inpatient operating costs and the ceiling; or, (2) net inpatient costs plus 3 percent of the ceiling.

• *Increase in the Wage Adjusted 75th Percentile Cap on the Target Amounts for Long-Term Care Hospitals.* We are implementing section 307(a) of Public Law 106–554, which provides a 2 percent increase to the wage-adjusted 75th percentile cap on the target amount for long-term care hospitals, effective for cost reporting periods beginning during FY 2001.

• *Increase in the Target Amounts for Long-Term Care Hospitals.* We are implementing section 307(a) Public Law 106–554, which provides a 25 percent increase to the target amounts for long-term care hospitals for cost reporting periods beginning in FY 2001, up to the cap on target amounts.

E. Changes Relating to Critical Access Hospitals (CAHs)

• *Elimination of Coinsurance for Clinical Diagnostic Laboratory Tests Furnished by a CAH.* We are implementing section 201(a) of Public Law 106–554, which amends section 1834(g) of the Act to state that there will be no collection of coinsurance, deductible, copayments, or any other type of cost sharing from Medicare beneficiaries with respect to outpatient clinical diagnostic laboratory services furnished as outpatient CAH services furnished as an outpatient CAH service, and that those services will be paid for on a reasonable cost basis.

• *Assistance With Fee Schedule Payment for Professional Services Under All Inclusive Rate.* We are implementing section 202 of Public Law 106–554, which amends section 1834(g)(2)(B) of the Act to provide that when a CAH elects to be paid for Medicare outpatient services under the reasonable costs for facility services plus fee schedule amounts for professional services method, Medicare will pay 115 percent of the amount it otherwise pays for the professional services.

• *Condition of Participation With Hospital Requirements at the Time of Application for CAH Designation (§ 485.612).* We are implementing a conforming change to correct § 485.612 to reflect that certain entities are not required to have a provider agreement prior to CAH designation.

F. Other Inpatient Costs

• *Increase in Reimbursement for Bad Debts.* We are implementing section 541 of Public Law 106–554 which provides a 30 percent decrease of allowable hospital bad debt reimbursement for cost reporting periods, beginning during FY 2001 and all subsequent fiscal years. This section modifies section 4451 Of Public Law 105–33 that reduced the total allowable bad debt reimbursement for hospitals by 45 percent.

III. Disproportionate Share Hospitals (Sections 211 and 303 of Public Law 106–554 and 42 CFR 412.106 (c) and 412.106(d))

A. Qualifying Thresholds for DSHs

Section 1886(d)(5)(F) of the Act provides for additional payments to prospective payment hospitals that serve a disproportionate share of low-income patients. Hospitals that meet the DSH patient percentage criteria are entitled to adjustments to their payments, including outlier payments.

Under section 1886(d)(5)(F)(v) of the Act, as it existed prior to enactment of Public Law 106–554 and under § 412.106(c) of the existing regulations, a hospital qualifies for DSH if the hospital has a disproportionate patient percentage equal to:

• At least 15 percent for an urban hospital with 100 or more beds or a rural hospital with 500 or more beds;

• At least 40 percent for an urban hospital with fewer than 100 beds;

• At least 45 percent for a rural hospital with 100 beds or fewer, if it is not also classified as an SCH;

• At least 30 percent for a rural hospital with more than 100 beds and fewer than 500 beds or which is classified as an SCH; or

• The hospital has 100 or more beds, is located in an urban area, and receives more than 30 percent of its net inpatient revenues from State and local government sources for the care of indigent patients not eligible for Medicare or Medicaid.

Section 211(a) of Public Law 106–554 amended section 1886(d)(5)(F)(v), to provide that, beginning with discharges occurring on or after April 1, 2001, the qualifying threshold is reduced to 15 percent for all hospitals. Therefore, we are revising § 412.106(c) to reflect the change in DSH qualifying threshold percentages.

B. Calculation of the Disproportionate Share Adjustment

Section 211(b) of Public Law 106–554 further amends section 1886(d)(5)(F) to revise the calculation of the disproportionate share percentage adjustment for hospitals affected by the revised thresholds as specified in section 211(a) of the Act. These adjustments, which are effective for discharges occurring on or after April 1, 2001, are as follows:

• Urban hospitals with fewer than 100 beds and whose disproportionate patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the disproportionate share adjustment percentage determined using the following formula:

(Disproportionate patient percentage—15) (.65) + 2.5.

• Urban hospitals with fewer than 100 beds and whose disproportionate patient percentage is equal to or greater than 19.3 percent:

Receive a flat add on of 5.25 percent.

• Rural hospitals that are both Rural Referral Centers (RRCs) and SCHs receive the disproportionate share adjustment percentage determined using the following:

Higher of SCH or RRC adjustment.

• Rural hospitals that are SCHs and are not RRCs and whose disproportionate patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the disproportionate share adjustment percentage determined using the following formula:

(Disproportionate patient percentage—15) (.65) + 2.5.

• Rural hospitals that are SCHs and are not RRCs and whose disproportionate patient percentage is equal to or greater than 19.3 percent and less than 30 percent:

Receive a flat add on of 5.25 percent.

• Rural hospitals that are SCHs and are not RRCs and whose disproportionate patient percentage is equal to or greater than 30 percent:

Receive 10 percent.

• Rural referral centers whose disproportionate patient percentage is greater than or equal to 15 percent and less than 19.3 percent receive the disproportionate share adjustment percentage determined using the following formula:

(Disproportionate patient percentage—15) (.65) + 2.5.

• Rural referral centers whose disproportionate patient percentage is equal to or greater than 19.3 percent but less than 30 percent:

Receive a flat add on of 5.25 percent.

• Rural referral centers whose disproportionate patient percentage is equal to or greater than 30 percent receive the disproportionate share adjustment percentage determined using the following formula:

(Disproportionate patient percentage—30) (.6) + 5.25.

• Rural hospitals with fewer than 500 beds and whose disproportionate patient percentage is equal to or greater than 15 percent and less than 19.3 percent receive the disproportionate share adjustment percentage using the following formula:

(Disproportionate patient percentage—15) (.65) + 2.5.

• Rural hospitals with fewer than 500 beds and whose disproportionate patient percentage is equal to or greater than 19.3 percent:

Receive a flat add on of 5.25 percent.

If we calculate disproportionate patient percentages to the hundredth place (our current practice), these payment formulas result in an anomaly for some disproportionate patient percentages just below 19.3 percent (but greater than 19.2 percent). That is, as the percentage values approach 19.3, the DSH adjustment resulting from the formula exceeds 5.25 percent. This would result in a higher DSH adjustment for percentages just below 19.3 than for percentages of 19.3 and above. Because we believe it would be contrary to the Congress' intent for hospitals with a disproportionate patient percentage of less than 19.3 percent to receive a greater payment than those hospitals of the same class that have a disproportionate patient percentage of 19.3 or greater, we are implementing this provision so that, for disproportionate patient percentages below 19.3 for affected hospitals, the DSH adjustment will not exceed 5.25 percent.

We are revising § 412.106(d) to reflect the changes in the disproportionate share adjustment.

C. Changes Relating to the DSH Reduction in Payments

Section 4403(a) of Public Law 105–33 amended section 1886(d)(5)(F) of the Act to reduce the payment a hospital would otherwise receive under the DSH formula in effect prior to Public Law 106–554 by 1 percent for FY 1998, 2 percent for FY 1999, 3 percent for FY 2000, 4 percent for FY 2001, 5 percent for FY 2002, and 0 percent for FY 2003 and each subsequent fiscal year. Subsequently, section 112 of Public Law 106–113 modified the amount of the reductions under Public Law 105–33 by changing the reduction to 3 percent for FY 2001 and 4 percent for FY 2002. Section 303 of Public Law 106–554 further modified the amount of the reductions under Public Law 106–113 by changing the reduction to 3 percent for discharges occurring on or after October 1, 2000 and before April 1, 2001, and to 1 percent for discharges occurring on or after April 1, 2001 and before October 1, 2001. Therefore, we are revising § 412.106(e) to reflect the changes made by section 303 of Public Law 106–554.

IV. Medicare-Dependent, Small Rural Hospitals (Section 212 of Public Law 106–554 and 42 CFR 412.108(a)(1)(iii))

Section 6003(f) of Public Law 101–239 added section 1886(d)(5)(G) of the Act and created the category of Medicare-dependent, small rural hospitals (MDHs) (defined in § 412.108) which are eligible for a special payment adjustment under the hospital inpatient prospective payment system. (For a more detailed discussion see the April 20, 1990 **Federal Register** (55 FR 15154)). The special payment adjustment for MDHs is effective for cost reporting periods beginning on or after April 1, 1990 and ending before October 1, 1994, or beginning on or after October 1, 1997 and ending before October 1, 2006.

Section 1886(d)(5)(G)(iii) of the Act and § 412.108(a)(1) of the regulations define an MDH as any hospital that meets all of the following criteria:

• The hospital is located in a rural area (as defined in § 412.63(b)).

• The hospital has 100 or fewer beds (as defined in § 412.105(b)) during the cost reporting period.

• The hospital is not also classified as an SCH (as defined in § 412.92).

• In the hospital's cost reporting period that began during FY 1987, at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits during the hospital's cost reporting period.

If the cost reporting period is for less than 12 months, the hospital's most recent 12-month or longer cost reporting period before the short period is used.

Section 212 of Public Law 106–554 provides that, effective with cost reporting periods beginning on or after April 1, 2001, hospitals have the option to base MDH eligibility on two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, rather than on the cost reporting period that began during FY 1987. The criteria for at least 60 percent Medicare utilization will be met if in at least two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits.

Hospitals that qualify under this new provision are subject to the other provisions already in place for MDHs, that is, the payment methodology as defined in § 412.108(c) and the volume decrease provision as defined in § 412.108(d).

A hospital must notify its fiscal intermediary to be considered for MDH status under this new provision. Any hospital that believes it meets the criteria to qualify as an MDH, based on at least two of the three most recently audited cost reporting periods, must submit a written request to its intermediary. The hospital's request must be submitted within 180 days from the date of the notice of amount of program reimbursement for the cost reporting period in question. The intermediary will make its determination and notify the hospital within 180 days from the date it receives the hospital's request and all of the required documentation.

We are revising § 412.108(a)(1)(iii) to reflect the additional option provided by section 212 of Public Law 106–554.

V. Changes to the Prospective Payment Rates for Inpatient Operating Costs (Section 301 of Public Law 106–554 and 42 CFR 412.63(s))

Section 301(a) of Public Law 106–554 amended section 1886(b)(3)(B)(i) of the Act by changing the percentage increase for the hospital inpatient payment rates for FYs 2001, 2002, and 2003. Previously, section 1886(b)(3)(B)(i) (as amended by section 406 of Public Law 106–113) established the update factor to the payment rates for inpatient prospective payment system hospitals (other than SCHs, who received the full market basket update effective October 1, 2000) as market basket minus 1.1 percent for FYs 2001 and 2002; the update factor for FY 2003 and subsequent fiscal years was established as the full market basket. Section 301(a) of Public Law 106–554 amended section 1886(b)(3)(B)(i) of the Act and changed the update factor for FY 2001 to the full market basket. Section 301(a) also revised the update factors applied to FYs 2002 and 2003. Prior to enactment of Public Law 106–554, the update factor for FY 2002 was the market basket minus 1.1 percentage points and the update factor for FY 2003 was the full market basket. Section 301(a) of Public Law 106–554 amended section 1886(b)(3)(B)(i) of the Act to revise the update factor for FYs 2002 and 2003 to be the market basket minus 0.55 percentage points.

Further, section 301(b) of Public Law 106–554 provided a special rule to implement the full market basket update

to inpatient hospital prospective payment rates for FY 2001. Under this special rule, for discharges occurring on or after October 1, 2000 and before April 1, 2001, the update factor for inpatient prospective payment system hospitals (other than SCHs) is equal to the market basket minus 1.1 percentage points. For discharges occurring on or after April 1, 2001 and before October 1, 2001, the update factor for the payment rates for inpatient prospective payment system hospitals (other than SCHs) is equal to the market basket plus 1.1 percentage points. Section 547 of Public Law 106–554 makes this special rule applicable solely to payments in FY 2001 and the payment increases resulting for FY 2001 are not taken into account in developing payments for future fiscal years.

As directed by the special rule in section 301(b) of Public Law 106–554, any discharges occurring on or after October 1, 2000, and before April 1, 2001, will be paid in accordance with the standardized amounts set forth in the FY 2001 hospital inpatient prospective payment system final rule published in the August 1, 2000, **Federal Register** (65 FR 47126). These rates were calculated using the market basket percentage increase of 3.4 percent minus 1.1 percentage points, for a 2.3 percent increase (see 65 FR 47112), as directed by section 1886(b)(3)(B)(i) of the Act, prior to the passage of Public Law 106–554.

To implement the special rule under section 301(b) of Public Law 106–554, we have recomputed the standardized amounts effective for discharges occurring on or after April 1, 2001. That is, we replaced the update factor of 2.3 percent applied to the standardized amounts in the August 1, 2000, final rule, with the update factor of 4.5 percent (the market basket percentage plus 1.1, or 3.4 plus 1.1 percentage points).

	Large urban areas		Other areas	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
National	$2,925.82	$1,189.26	$2,879.51	$1,170.43
National PR	2,900.64	1,179.02	2,900.64	1,179.02
Puerto Rico	1,402.79	564.66	1,380.58	555.72
SCHs	2,895.02	1,176.74	2,849.20	1,158.11

FINAL FY 2001 CAPITAL RATES

National	$380.85
Puerto Rico	184.61

A. Budget Neutrality

Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual diagnosis-related group (DRG) reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are projected to be the same as those that would have been made without such adjustments. Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are projected to be the same as those that would have been made without the change in the wage index.

Finally, under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that final aggregate payments under the prospective payment system are projected to equal the aggregate prospective payments that would have been made absent the geographic reclassification provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act.

The distributive effects on hospital payments of the IME and DSH changes also included in Public Law 106–554 required us to recalculate the budget neutrality factors that are required by section 1886(d)(8)(D) of the Act.

The budget neutrality factors that were used to establish the standardized amounts effective for discharges occurring on or after October 1, 2000 were: 0.997225 for the DRG reclassification and recalibration and updated wage index (65 FR 47112); and 0.993187 for geographic reclassification (65 FR 47113). Using the same methodology that was used to calculate the budget neutrality factors in the August 1, 2000 final rule, the corresponding budget neutrality factors for the standardized amounts effective for discharges occurring on or after April 1, 2001 and before October 1, 2001 are: 0.997122 and 0.993279. The budget neutrality factor for Puerto Rico did not change. Therefore, the budget neutrality factor for Puerto Rico as published in the August 1, 2000 **Federal Register** (65 FR 47112) is still in effect.

B. Outliers

In accordance with section 1886(d)(3)(B) of the Act, which directs the Secretary to adjust the national standardized amounts to account for the estimated proportion of total payments made to outlier cases, the fixed-loss outlier threshold was also revised as a result of the change made by Public Law 106–554 to the update factor for the operating standardized amounts. For discharges occurring on or after April 1, 2001 and before October 1, 2001, we are establishing a fixed-loss cost outlier threshold equal to: The prospective payment rate for the DRG, plus IME and DSH payments, plus $16,500 ($14,940 for hospitals that have not yet entered the prospective payment system for capital-related costs). In determining the outlier threshold, we used the same methodology employed to determine the outlier threshold for FY 2001 (65 FR 47113 through 47114). Outlier payments for discharges occurring on or after October 1, 2000 and before April 1, 2001, will be determined in accordance with the standardized amounts and outlier thresholds set forth in the FY 2001 final rule published in the August 1, 2000 **Federal Register** (65 FR 47113).

Although the market basket percentage used to update SCHs was not revised by Public Law 106–554, the standardized rates applied to these hospitals for discharges occurring on or after April 1, 2001 and before October 1, 2001 also increase slightly. This increase in SCH rates is due to the budget neutrality factors effective for this portion of the fiscal year.

For discharges occurring on or after April 1, 2001 and before October 1, 2001, the outlier adjustment factors are as follows:

	Operating standardized amounts	Capital Federal rate
National	0.948929	0.937854
Puerto Rico	0.973671	0.967355

VI. Changes to the IME Adjustment (Section 302 of Public Law 106–554 and 42 CFR 412.105(d)(3))

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved GME program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the IME adjustment, are located at § 412.105. The additional payment is based in part on the applicable IME adjustment factor. The IME adjustment factor is calculated using a hospital's ratio of residents-to beds, which is represented as r, and a multiplier, which is represented as c, in the following equation: $c \times [(1 + r)^{.405} - 1]$. The formula c represents a certain percentage increase in payment for every 10 percent increase in the resident-to-bed ratio.

Public Law 106–113 revised the formula multiplier for discharges occurring during FY 2001 to 1.54. However, section 302(b) of Public Law 106–554 provides a special payment rule which states that, for discharges occurring on or after April 1, 2001 and before October 1, 2001, IME payments are to be made as if ''*c*'' equaled 1.66, rather than 1.54. The multiplier of 1.54 for the first 6 months of FY 2001 represents a 6.24 percent increase in the level of the IME adjustment for every 10 percent increase in the resident-to-bed ratio, and the multiplier for the second 6 months of FY 2001 represents a 6.72 percent increase in the level of the IME adjustment for every 10 percent increase in the resident-to-bed ratio. This results in an aggregate 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio for FY 2001. Section 547(a)(2) of Public Law 106–554 provides further clarification that these payment increases will not apply to discharges occurring after FY 2001 and will not be taken into account in calculating the payment amounts applicable for discharges occurring after FY 2001.

Under amendments enacted by section 302(a) of Public Law 106–554, for discharges occurring during FY 2002, the formula multiplier is 1.6. For discharges occurring during FY 2003 and thereafter, the formula multiplier is 1.35. Changes to the factor for discharges occurring in FY 2002 and thereafter are addressed in the proposed rule on FY 2002 hospital inpatient prospective payment system rates and changes (66 FR 22688). We are amending § 412.105(d)(3) to reflect the additional payment provided for discharges occurring during FY 2001 under section 302(b) of Public Law 106–554.

VII. Sole Community Hospitals (Section 213 of Public Law 106–554 and 42 CFR 412.92)

Under the hospital inpatient prospective payment system, special payment protections are provided to SCHs. Section 1886(d)(5)(D)(iii) of the Act defines an SCH as, among other things, a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, travel time, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria a hospital must meet to be classified as an SCH are located at § 412.92(a).

Prior to FY 2001, SCHs were paid based on whichever of the following rates yielded the greatest aggregate payment to the hospital for the cost reporting period: (1) The Federal national rate applicable to the hospital; (2) the updated hospital-specific rate based on FY 1982 costs per discharge; or (3) the updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113, which amended section 1886(b)(3) of the Act, provides that an SCH that was paid for its cost reporting period beginning during 1999 on the basis of either its updated FY 1982 or FY 1987 cost per discharge (the hospital-specific rate as opposed to the Federal rate) may elect to receive payment under a methodology using a third hospital-specific rate, based on the hospital's FY 1996 costs per discharge. This amendment to the statute means that, for cost reporting periods beginning on or after October 1, 2000, eligible SCHs can elect to use the allowable FY 1996 operating costs for inpatient hospital services as the basis for their target amount, rather than either their FY 1982 or FY 1987 costs.

Section 213 of Public Law 106–554, extends to all SCHs the option to rebase using their FY 1996 operating costs. That is, in order to rebase using its allowable FY 1996 operating costs, it is not necessary that the SCH was paid for its cost reporting period beginning during 1999 on the basis of the either its FY 1982 or FY 1987 costs. The provision is effective as if it were included in the enactment of section 405 of Public Law 106–113. Therefore, it applies to all SCHs for cost reporting periods beginning on or after October 1, 2000.

As discussed in the August 1, 2000 final rule implementing the 1996 rebasing under section 405 of Public Law 106–113 (65 FR 47083), when calculating an eligible SCH's FY 1996 hospital-specific rate, we utilize the same basic methodology used to calculate FY 1982 and FY 1987 base period amounts. That methodology is set forth in §§ 412.71 through 412.75 of the regulations, and discussed in detail in several prospective payment system documents published in the **Federal Register** on September 1, 1983 (48 FR 39752); January 3, 1984 (49 FR 256); June 1, 1984 (49 FR 23010); and April 20, 1990 (55 FR 15150).

Our fiscal intermediaries will identify those SCHs that were not included in the FY 1996 rebasing provision prior to enactment of Public Law 106–554, and calculate the FY 1996 hospital-specific rate. If this rate exceeds the Federal rate and the higher of the FY 1982 or FY 1987 updated costs per discharge, the hospital will receive payment based on the FY 1996 hospital-specific rate (based on the blended amounts described in section 1886(b)(3)(I)(i) of the Act).

The fiscal intermediary will notify affected hospitals of their FY 1996 hospital-specific rate prior to October 1, 2001. Consistent with our policies relating to FY 1982 and FY 1987 hospital-specific rates, we will permit hospitals to appeal a fiscal intermediary's determination of the FY 1996 hospital-specific rate under the procedures set forth in 42 CFR part 405, subpart R, which concern provider payment determinations and appeals. In the event of a modification of base period costs for FY 1996 rebasing due to a final nonappealable court judgment or certain administrative actions (as defined in § 412.72(a)(3)(i)), the

adjustment would be retroactive to the time of the fiscal intermediary's initial calculation of the base period costs, consistent with the policy for rates based on FY 1982 and FY 1987 costs.

For purposes of payment to SCHs for which the FY 1996 hospital-specific rate yields the greatest aggregate payment, section 213 of Public Law 106–554 utilizes a formula similar to that set forth in section 405 of Public Law 106–113, except that the Federal rate will now be included in the blend, as set forth below:

- For discharges during FY 2001,
- 75 percent of the Federal amount or the greater of the updated FY 1982 or FY 1987 former target (identified in the statute as the subsection (d)(5)(D)(i) amount), plus 25 percent of the updated FY 1996 amount (identified in the statute as the ''rebased target amount'').
- For discharges during FY 2002,
- 50 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 former target, plus 50 percent of the updated FY 1996 amount.
- For discharges during FY 2003,
- 25 percent of the Federal amount or the greater of the updated FY 1982 or FY 1987 former target, plus 75 percent of the updated FY 1996 amount.
- For discharges during FY 2004 or any subsequent fiscal year, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 amount.

We are revising § 412.92(d) to incorporate the provisions of section 1886(b)(3)(I) of the Act as amended by section 213 of Public Law 106–554.

VIII. Additional Payment to Hospitals That Operate Approved Nursing and Allied Health Education Programs (Section 512 of Public Law 106–554 and 42 CFR 413.87)

Under sections 1861(v) and 1886(a) of the Act, hospitals that operate approved nursing or allied health education programs may be eligible for the reimbursement of their reasonable costs of operating such programs. Section 1886(h) of the Act establishes the methodology for determining payments to hospitals for the direct costs of GME programs. Section 1886(h) of the Act, as implemented in regulations at 42 CFR 413.86, specifies that Medicare payments for direct costs of GME are based on a prospectively determined per resident amount (PRA). The PRA is multiplied by the number of full-time equivalent residents working in all areas of the hospital complex (and nonhospital sites, where applicable), and the product is then multiplied by the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payment.

Section 1886(h)(3)(D) of the Act, as added by section 4624 of Public Law 105–33, provides a 5-year phase-in of payments to teaching hospitals for direct costs of GME associated with services to Medicare+Choice (managed care) enrollees for portions of cost reporting periods occurring on or after January 1, 1998. The amount of payment for direct GME is calculated by (1) multiplying the aggregate approved amount (that is, the product of the PRA and the number of FTE residents working in all areas of the hospital (and nonhospital sites, if applicable)), by the ratio of the number of inpatient bed days that are attributable to Medicare+Choice enrollees to total inpatient bed days, and (2) multiplying the result by an applicable percentage.

The applicable percentages are 20 percent for portions of cost reporting periods occurring in calendar year (CY) 1998, 40 percent in CY 1999, 60 percent in CY 2000, 80 percent in CY 2001, and 100 percent in CY 2002 and subsequent years. (Section 1886(d)(11) of the Act, as added by section 4622 of Public Law 105–33, provides a 5-year phase-in of payments to teaching hospitals for IME associated with services to Medicare+Choice enrollees for portions of cost reporting periods occurring on or after January 1, 1998, as well. However, the Medicare+Choice IME payments are irrelevant for the purposes of this section of the interim final rule, because although section 541 of Public Law 106–113 affects the payments for Medicare+Choice direct GME, it in no way affects the payments for Medicare+Choice IME.)

Section 541 of Public Law 106–113 further amended section 1886 of the Act by adding subsection (l) and amending section 1886(h)(3)(D) to provide for additional payments to hospitals for nursing and allied health education programs associated with services to Medicare+Choice enrollees. Hospitals that operate approved nursing or allied health education programs, as defined under the regulations at 42 CFR 413.85, and receive Medicare reasonable cost reimbursement for these programs, would receive additional payments. This provision is effective for portions of cost reporting periods occurring in a calendar year, beginning with calendar year 2000.

Section 1886(l) of the Act, as added by section 541 of Public Law 106–113, specifies the methodology to be used to calculate these additional payments and places a limitation, that is, $60 million, on the total amount that is projected to be expended in any calendar year. We refer to the total amount of $60 million or less as the payment ''pool.'' We emphasize that we use the term ''pool'' solely for ease of reference; the term reflects an estimated dollar figure, a number that is plugged into a formula to calculate the amount of additional payments. The term ''pool'' does not refer to a discrete fund of money that is set aside in order to make the additional payments (thus, for example, if the estimated ''pool'' is $50 million, we use the number $50 million to calculate the amount of additional payments, but this does not mean that we set aside $50 million in a separate fund from which we make the additional payments). The total amount of additional payments is based on the ratio of estimated total direct GME payments for Medicare+Choice enrollees to estimated total Medicare direct GME payments, multiplied by the total Medicare nursing and allied health education payments. Under section 541 of Public Law 106–113, a hospital would receive its share of these additional payments in proportion to the amount of Medicare nursing and allied health education payments received in the cost reporting period that ended in the fiscal year that is 2 years prior to the current calendar year, to the total amount of nursing and allied health payments made to all hospitals in that cost reporting period. Section 541(b) of Public Law 106–113 amended section 1886(h)(3) of the Act to provide that direct GME payments for Medicare+Choice utilization will be reduced to account for the additional payments that are made for nursing and allied health education programs under the provisions of section 1886(l) of the Act.

We implemented section 541 by establishing regulations at 42 CFR 413.87 to incorporate the provisions of section 1886(l) of the Act. We specified the rules for a hospital's eligibility to receive the additional payment under section 1886(l), the requirements for determining the additional payment to each eligible hospital, and the methodologies for calculating each additional payment and for calculating the payment ''pool.'' The preamble language regarding § 413.87 can be found in the August 1, 2000 interim final rule with comment period (65 FR 47036 through 47039).

Public Law 106–554 further amended section 1886(l)(2)(C) of the Act. Specifically, section 512 of Public Law 106–554 changed the formula for determining the additional amounts to be paid to hospitals for Medicare+Choice nursing and allied health costs. Under Public Law 106–113, as described above, the additional

payment amount was determined based on the proportion of each individual hospital's nursing and allied health education payments to total nursing and allied health education payments made across all hospitals. This formula does not account for a hospital's specific Medicare+Choice utilization. Section 512 of Public Law 106–554 revised this payment formula to specifically account for each hospital's Medicare+Choice utilization. Accordingly, we are making conforming changes at § 413.87 to reflect this change. The changes are effective for portions of cost reporting periods occurring on or after January 1, 2001. The revised methodology for calculating the additional payments is described below.

A. Calculating the Additional Payment Amount

For portions of cost reporting periods occurring on or after January 1, 2001, an eligible hospital will receive the additional payment amount calculated according to the following steps:

Step 1: Determine for each eligible hospital the—

- Total Medicare payments received for approved nursing or allied health education programs based on data from the settled cost reports for the period(s) ending in the fiscal year that is 2 years prior to the current calendar year;
- Total inpatient days for that same cost reporting period; and
- Total Medicare+Choice inpatient days for that same cost reporting period.

For example, if the current calendar year is 2001, determine the hospital's total nursing or allied health education payments made in its cost reporting period(s) ending in FY 1999. Also, determine the hospital's total inpatient days and total Medicare+Choice inpatient days for its cost reporting period ending in FY 1999. If a hospital has more than one cost reporting period ending in that fiscal year, the fiscal intermediary will add the nursing and allied health payments made to the hospital over those cost reporting periods. The inpatient days and Medicare+Choice inpatient days for the cost reporting periods would be added, as well.

Step 2: Using the data in step 1, determine the ratio of the individual hospital's total nursing or allied health payments, to its total inpatient days. Multiply this ratio by the hospital's total Medicare+Choice inpatient days.

Step 3: HCFA will determine the following:

- The total of all nursing and allied health education program payments made to all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year.
- The total of all inpatient days from those same cost reporting periods.
- The total of all Medicare+Choice inpatient days for those same cost reporting periods.

Step 4: HCFA will use the data in step 3 to determine the ratio of the total of all nursing and allied health education program payments made to all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year, to the total of all inpatient days from that cost reporting period. HCFA will multiply this ratio by the total of all Medicare+Choice inpatient days for that cost reporting period.

Step 5: Calculate the ratio of the product determined in step 2 to the product determined in step 4.

Step 6: Multiply the ratio determined in step 5 by the Medicare+Choice nursing and allied health payment ''pool'' (as determined below). This is the additional payment amount for the current calendar year for an eligible hospital.

Example: In its cost reporting period ending in FY 1999, Hospital A received $100,000 in total Medicare payments for approved nursing and allied health education programs. Hospital A's total inpatient days were 28,000. Total Medicare+Choice inpatient days were 2,800.

For all cost reporting periods ending in FY 1999, Medicare paid $250,000,000 in total nursing and allied health education program payments. The total number of inpatient days across all hospitals in that year was 142,000,000, and the total number of Medicare+Choice inpatient days was 14,200,000.

The CY 2001 Medicare+Choice nursing and allied health payment ''pool'' is $26,000,000. Thus, Hospital A's Medicare+Choice nursing and allied health education payment for CY 2001 will be calculated as follows:

$$\left(\frac{\dfrac{\$100{,}000}{28{,}000 \text{ inpatient days}} \times 2{,}800 \text{ M+C inpatient days}}{\dfrac{\$250{,}000{,}000}{142{,}000{,}000 \text{ inpatient days}} \times 14{,}200{,}000 \text{ M+C inpatient days}} \times 26{,}000{,}000\right) = \$10{,}400$$

To determine these totals, we will use the best available cost reporting data for the applicable hospitals from the Hospital Cost Report Information System (HCRIS) for cost reporting periods in the fiscal year that is 2 years prior to the current calendar year. If the necessary data are not included in HCRIS because a hospital files a manual cost report, we will obtain the necessary data from the fiscal intermediaries that serve those hospitals. If a hospital has more than one cost reporting period ending in the fiscal year that is 2 years prior to the current calendar year, we will include all of the hospital's cost reports for those periods in our calculations. If a hospital does not have a cost reporting period ending in the fiscal year that is 2 years prior to the current calendar year (such as a hospital with a long cost reporting period), the hospital's data will be included in the calculations for the calendar year that is 2 years after the fiscal year in which the long cost reporting period ends.

B. HCFA Calculation of Medicare+Choice Nursing and Allied Health Payment ''Pool''

In accordance with section 1886(l) of the Act, each calendar year, HCFA estimates a total amount, not to exceed $60 million, which is the basis for determining the additional payments for nursing and allied health education associated with Medicare+Choice enrollees to hospitals that operate approved nursing or allied health education programs. The ''pool'' is calculated for each calendar year by determining the product of: (1) The ratio of total projected Medicare+Choice direct GME payments to total projected direct GME payments, and (2) the total projected nursing and allied health education payments. This methodology is explained in more detail in the August 1, 2000 interim final rule with comment period (65 FR 47038).

The projections of direct GME, Medicare+Choice direct GME, and nursing and allied health payments for a calendar year are based on the best available cost report data from HCRIS. (For example, for CY 2001, the

projections are based on the best available cost report data from HCRIS 1999). These payment amounts are then increased to the appropriate calendar year using the increases allowed by section 1886(h) of the Act for these services (using the Consumer Price Index (CPI) increases for direct GME, the percentage applicable for the current calendar year for Medicare+Choice direct GME, and assuming nursing and allied health remains a constant percentage of inpatient hospital spending).

C. Proportional Reduction to Medicare+Choice Direct GME Payments

In order for the Secretary to make the additional payments to eligible hospitals operating approved nursing or allied health education programs, section 1886(h)(3)(D) of the Act, as amended by section 541(b) of Public Law 106–113, specifies that the Secretary will carve out an estimated percentage of payments that are made to teaching hospitals for direct GME associated with services to Medicare+Choice enrollees. Specifically, the law provides that the estimated reductions in Medicare+Choice direct GME payments must equal the estimated total additional Medicare+Choice nursing and allied health education payments. The percentage reduction is estimated by calculating the ratio of the Medicare+Choice nursing and allied health payment ''pool'' for the current calendar year to the projected total Medicare+Choice direct GME payments made to all hospitals for the current calendar year. Accordingly, the regulations at § 413.86(d)(4) state that for portions of cost reporting periods occurring in a calendar year, each hospital that receives Medicare+Choice direct GME payments will have these payments reduced by a certain percentage.

D. Calculation of Amounts for CY 2001

In order for the Medicare+Choice nursing and allied health payments to be made in CY 2001 (as described in section A above), HCFA must provide the appropriate data to the fiscal intermediaries. The data that HCFA will provide include the Medicare+Choice nursing and allied health payment ''pool'' for CY 2001, the total amount of Medicare nursing and allied health education payments made to all hospitals for cost reporting periods ending in FY 1999, the total number of inpatient days from all hospitals for cost reporting periods ending in FY 1999, the total Medicare+Choice inpatient days from all hospitals for cost reporting periods ending in FY 1999, and the percent reduction to Medicare+Choice direct GME payments in CY 2001. (The fiscal intermediaries will obtain the data for each individual hospital from the hospital's cost report to complete the calculation). We are not publishing this data in this interim final rule with comment period, because the FY 1999 data in HCRIS is not complete at this time. Rather, we will provide the necessary data to the fiscal intermediaries in a Program Memorandum as soon as more complete data is available later this calendar year.

E. Regulation Changes

We are revising § 413.87 to incorporate the provisions of section 512 of Public Law 106–554.

F. Technical Amendment

It has come to our attention that the regulations at § 413.86(d)(4) and § 413.87(d) contain errors. The regulations at § 413.86(d)(4) currently read, ''Effective for cost reporting periods beginning on or after January 1, 2000, the product derived from step three is reduced in accordance with the provisions of § 413.87(f).'' Consistent with the statutory effective date and to clarify the intent of the reference to § 413.87(f), we are revising § 413.86(d)(4) to state that, ''Effective for portions of cost reporting periods occurring on or after January 1, 2000, the product derived from step three is reduced by a percentage equal to the ratio of the Medicare+Choice nursing and allied health payment ''pool'' for the current calendar year as described at § 413.87(f), to the projected total Medicare+Choice direct GME payments made to all hospitals for the current calendar year.'' We are also making a conforming change to § 413.87(d), which currently reads, ''Subject to the provisions of paragraph (f) of this section * * *'' instead, we are revising this language to state, ''Subject to the provisions of § 413.86(d)(4) * * *.''

IX. Changes to the Capital Prospective Payment System Rates (Section 301 of Public Law 106–554)

Section 301(b) of Public Law 106–554 provides for a special rule for payment for the operating standardized amounts for hospitals other than SCHs for FY 2001. For discharges occurring on or after April 1, 2001, and before October 1, 2001, the update to the operating standardized amounts for hospitals other than SCHs is equal to the market basket percentage increase plus 1.1 percentage points. This provision amends the prior statutory 1.1 percent reduction to the update to the FY 2001 operating standardized amounts for hospitals other than SCHs as provided by section 4401(a)(1) of Public Law 105–33 and section 406 of Public Law 106–113.

Section 1886(d)(3)(B) of the Act directs the Secretary to adjust the inpatient operating national standardized amounts to account for the estimated proportion of operating DRG payments made to payments in outlier cases. Accordingly, as a result of this change to the update to the operating standardized amounts for discharges occurring on or after April 1, 2001 and before October 1, 2001, we are revising the fixed-loss outlier thresholds. The regulations at § 412.312(c) establish a unified outlier methodology for inpatient operating and inpatient capital-related costs, which utilizes a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital prospective payment system payments. Because operating DRG payments will increase as a result of section 301 of Public Law 106–554, we decreased the fixed-loss threshold. The decrease in the outlier threshold also results in an increase in the estimated outlier payments for capital from 5.91 percent to 6.21 percent. Thus, the capital national outlier adjustment factor is revised from 0.9409 (as specified in the August 1, 2000 final rule (65 FR 47121)) to 0.9379.

The basic methodology for determining the capital Federal rate is set forth in §§ 412.308 through 412.352. Although the operating update was affected by section 301 of Public Law 106–554, the standard capital Federal rate update remains unchanged (0.9 percent). The exceptions adjustment factor is determined based on an estimate of the ratio of exception payments to total capital payments. As a result of the fixed-cost outlier threshold, which affects total capital payments, in order to maintain budget neutrality for exception payments, we are revising the exception adjustment factor from 0.9785 to 0.9787. The national GAF/DRG budget neutrality factor is revised from 0.9979 to 0.9978. The Puerto Rico GAF/DRG budget neutrality factor remains unchanged (1.0037). Accordingly as a result of the revisions to the capital outlier reduction factor and the capital exceptions adjustment factor, for discharges occurring on or after April 1, 2001 and before October 1, 2001, the national capital Federal rate is revised from $382.03 (65 FR 47127) to $380.85 and the Puerto Rico capital rate is revised from $185.06 (65 FR 47127) to $184.61 as set forth in section IX of this interim final rule with comment period.

In accordance with § 412.328(e), the hospital-specific rate is determined using the update factor and the exceptions adjustment factor. As a result of revising the exceptions adjustment factor to account for the change to the fixed-loss outlier threshold resulting from the special payment rule for FY 2001 provided for under section 301(b) of Public Law 106–554, for discharges occurring on or after April 1, 2001 and before October 1, 2001, the cumulative net adjustment to the hospital-specific rate has been revised from 1.0147 (65 FR 47124) to 1.0145. For discharges occurring on or after April 1, 2001, and before October 1, 2001, the hospital-specific rate is determined by multiplying the FY 2000 hospital-specific rate by the cumulative net adjustment of 1.0145.

X. Changes for Excluded Hospitals and Hospital Units

A. Increase in the Incentive Payment for Excluded Psychiatric Hospitals and Units (Section 306 of Public Law 106–554 and 42 CFR 413.40(d)(2))

For cost reporting periods beginning before October 1, 1997, a hospital that had inpatient operating costs less than, or equal to, its ceiling was paid its costs plus the lower of 50 percent of the difference between inpatient operating costs and the ceiling or 5 percent of the ceiling.

Section 4415 of Public Law 105–33 amended section 1886(b)(1)(A) of the Act to provide that for cost reporting periods beginning on or after October 1, 1997, if a hospital's net inpatient operating costs are less than or equal to, the ceiling, the amount of the bonus payment would be the lower of 15 percent of the difference between the inpatient operating costs and the ceiling or 2 percent of the ceiling.

Section 306 of the Public Law 106–554 has further amended section 1886(b)(1)(A) of the Act, as it applied to a psychiatric hospital or unit, to provide that effective for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, if a psychiatric hospital or unit's net inpatient operating costs are less than, or equal to, the ceiling, the amount of the bonus payment is the lower of 15 percent of the difference between the inpatient operating costs and the ceiling, or 3 percent of the ceiling.

We are revising the regulations at § 413.40(d)(2) to incorporate this change.

B. Payment for Long-Term Care Hospital Costs (Section 307 of Public Law 106–554 and 42 CFR 413.40(c)(4)

1. Increase in the Limitation on the Target Amounts for Long-Term Care Hospitals

In the August 29, 1997 final rule with comment period (62 FR 46018), in accordance with section 4414 of Public Law 105–33, we implemented section 1886(b)(3)(H) of the Act, which provides for caps on the target amounts for existing and new excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997, through September 30, 2002. The caps on the target amounts apply to three classes of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. In establishing the caps on the payment amounts within each class of hospital for new hospitals, section 1886(b)(7)(C) of the Act, as amended by section 4416 of Public Law 105–33, instructed the Secretary to provide an appropriate adjustment to take into account area differences in average wage-related costs. However, because the statutory language under section 4414 of Public Law 105–33 did not provide for the Secretary to adjust for area differences in wage-related costs in establishing the caps on the target amounts within each class of hospital for existing hospitals, we did not adjust for wage-related differences for existing facilities.

In the August 1, 2000 interim final rule with comment period (65 FR 47039), we implemented section 121 of Public Law 106–113, which further amended section 1886(b)(3)(H) of the Act by directing the Secretary to provide for an appropriate wage adjustment to the caps on the target amounts for all psychiatric hospitals and units, rehabilitation hospitals and units and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. For purposes of calculating the caps, section 1886(b)(3)(H)(ii) of the Act requires the Secretary to first ''estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996.'' Section 1886(b)(3)(H)(iii) of the Act, as added by section 121 of Public Law 106–113, requires the Secretary to provide for ''an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.''

The August 1, 2000 final rule (65 FR 47096) listed the FY 2001 labor-related share and nonlabor-related share of the national 75th percentile wage-neutralized cap for long-term care hospitals as follows:

- Labor-related Share: $29,284.
- Nonlabor-related Share: $11,642.

The final rule also discussed that within each class a hospital's wage-adjusted cap on its target amount is determined by adding the hospital's nonlabor-related portion of the national wage-neutralized cap to its wage-adjusted labor-related portion of the national wage-neutralized cap. A hospital's wage-adjusted labor-related portion is calculated by multiplying the labor-related portion of the national wage-neutralized 75th percentile cap for the hospital's class by the hospital's applicable wage index. For FY 2001, a hospital's applicable wage index is the wage index under the hospital inpatient prospective payment system as shown in Tables 4A and 4B of the August 1, 2000 final rule (65 FR 47149 through 47156) corresponding to the area in which the hospital is physically located (MSA or rural area).

Section 307(a) of Public Law 106–554 further amends section 1886(b)(3) of the Act and provides for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for long-term care hospitals effective for cost reporting periods beginning during FY 2001. This provision is only applicable to long-term care hospitals that were subject to the cap for existing excluded providers as specified in § 413.40(c).

In accordance with section 1886(b)(3) of the Act as amended, for cost reporting periods beginning during FY 2001, the revised labor-related and nonlabor-related shares of the cap on the target amount for long-term care hospitals, which reflect the 2-percent increase, are as follows:

REVISED FY 2001 NATIONAL CAP FOR LONG-TERM CARE HOSPITALS

FY 2001 Labor-Related Share	FY 2001 Nonlabor-Related Share
$29,870	$11,875

Note that the national 75th percentile wage-neutralized caps on the target amount for the other excluded hospitals and units subject to the caps under section 1886(b)(3)(H) of the Act (psychiatric and rehabilitation) are not affected by section 307 of Public Law 106–554. We are revising the regulations

at § 413.40(c)(4)(iii) to incorporate this change.

2. Increase in the Target Amounts for Long-Term Care Hospitals

In the August 29, 1997 final rule with comment period (62 FR 46016), we implemented the amendment to section 1886(b)(3)(B) of the Act, as made by section 4411 of Public Law 105–33, which set forth the applicable rate-of-increase percentage for cost reporting periods beginning during FY 1999 through FY 2002. The rate-of-increase is equal to the market basket increase percentage minus an amount based on the percentage by which the hospital's operating costs exceed the hospital's ceiling for the most recent available cost reporting period. The applicable rate-of-increase percentages (update factors) for FY 2001 are described in the August 1, 2000 final rule (65 FR 47125). For FY 2001, the market basket increase percentage was forecast at 3.4 percent, which results in an update for long-term care hospitals for FY 2001 of between 0.9 percent and 3.4 percent, or 0 percent, depending on the hospital's costs in relation to its rate-of-increase limit.

In addition to the increase to the cap on the target amounts for long-term care hospitals, section 307(a) of Public Law 106–554 also amends section 1886(b)(3) of the Act to provide for a 25 percent increase to the target amounts determined under section 1886(b)(3)(A) of the Act for long-term care hospitals, for cost reporting periods beginning in FY 2001, subject to the applicable cap on the target amounts. Thus, this provision requires a revision to the determination of each long-term care hospital's FY 2001 target amount as specified § 413.40(c)(4). For cost reporting periods beginning during FY 2001, the hospital-specific target amount otherwise determined for a long-term care hospital as specified in the regulations at § 413.40(c)(4)(ii) is multiplied by 1.25 (that is, increased by 25 percent), subject to the limitation that the revised FY 2001 target amounts for a long-term care hospital cannot exceed its wage-adjusted national cap as required by section 1886(b)(3) of the Act, as amended by section 307(a) of Public Law 106–554. Note that the 25 percent increase to the target amount under section 307(a) of Public Law 106–554 is applicable only to long-term care hospitals, and not to other excluded hospitals as defined by section 1886(d)(1)(B) of the Act (psychiatric and rehabilitation hospitals and units, children's and cancer hospitals).

We are revising the regulations at § 413.40(c)(4)(iii) to incorporate this change.

XI. Critical Access Hospitals (CAHs)

A. Elimination of Coinsurance for Clinical Diagnostic Laboratory Tests Furnished by a CAH (§§ 410.52 and 413.70)

Under section 1834(g) of the Act, prior to the enactment of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113, clinical diagnostic laboratory services furnished by a CAH to its outpatients were, like other outpatient CAH services, paid for on a reasonable cost basis, subject to the Part B deductible and coinsurance provisions. With respect to coinsurance, this meant that the beneficiary was responsible for payment of 20 percent of the CAH's customary charges for the services and the CAH received payment from the Medicare program equal to 80 percent of its reasonable costs of furnishing the services.

Section 403(e) of Public Law 106–113 amended section 1833(a) of the Act and eliminated the Part B coinsurance and deductible for laboratory tests furnished by a CAH on an outpatient basis. Thus, CAHs were not permitted to impose a deductible or coinsurance charge on the beneficiary for these services. Also, in accordance with section 1833(a)(1)(D) and (a)(2)(d), as also amended by section 403(e) of Public Law 106–113, Medicare Part B was to pay 100 percent of the lesser of the amount determined under the local laboratory fee schedule, the national limitation amount for that test, or the amount of the charges billed for the tests.

The effect of this change was that clinical diagnostic laboratory tests furnished by a CAH to its outpatients, were paid for on the same basis as clinical diagnostic laboratory tests furnished by full-service hospitals to outpatients. Section 403(e)(2) of Public Law 106–113 provided that this provision was effective with respect to services furnished on or after November 29, 1999.

Section 201(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA), Public Law 106–554 amends section 1834(g) of the Act to provide that there will be no collection of coinsurance, deductible, copayments, or any other type of cost sharing from Medicare beneficiaries with respect to outpatient clinical diagnostic laboratory services in a CAH.

Section 201(a) further provides that payment for these services will be made on a reasonable cost basis. Section 201(b) of the Public Law 106–554, amends section 1833(a) of the Act by eliminating any reference to CAHs receiving payment for outpatient clinical diagnostic laboratory services on a fee schedule basis. These amendments are effective for services furnished on or after November 29, 1999.

We are incorporating the provisions of section 201 of Public Law 106–554 in section 413.70 of the regulations and changing the references cited in § 410.152(k)(2). To prevent any misunderstanding of the scope of section 201(a), we are further revising § 413.70(b)(3)(iii) to clarify that payment to a CAH for clinical diagnostic laboratory tests for individuals who are not inpatients of the CAH will be made on a reasonable cost basis only if the individuals are outpatients of the CAH at the time the specimens are collected. Outpatient status will be determined under the definition in § 410.2, which provide that an ''outpatient'' is a person who has not been admitted as an inpatient but is registered as an outpatient and receives services (rather than supplies alone) from the CAH.

We recognize that CAHs may appropriately function as reference laboratories, by performing clinical diagnostic laboratory tests on specimens from persons who do not meet the ''outpatient'' definition but have the specimens drawn at other locations, such as physician offices. Payment for clinical diagnostic laboratory tests for these other individuals (that are persons who are not patients of the CAH when the specimens are collected) will be made in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Act.

Revised program instructions and billing systems changes to implement these provisions are being developed and will be released as soon as possible.

B. Assistance With Fee Schedule Payment for Professional Services Under All Inclusive Rate

Prior to enactment of Public Law 106–113, section 1834(g) of the Act provided that the amount of payment for outpatient CAH services would be the reasonable costs of the CAH in providing such services. However, the reasonable costs of the CAH's services to outpatients included only the CAH's costs of providing facility services, and did not include any payment for professional services. Physicians and other practitioners who furnished professional services to CAH outpatients billed the Part B carrier for these services and were paid under the

physician fee schedule in accordance with the provisions of section 1848 of the Act.

Section 403(d) of Public Law 106–113 amended section 1834(g) of the Act to permit the CAH to elect to be paid for its outpatient services under an optional method. CAHs making this election would be paid amounts equal to the sum of the following costs, less the amount that the hospital may charge as described in section 1866(a)(2)(A) of the Act (that is, Part A and Part B deductibles and coinsurance amounts):

- For facility services, not including any services for which payment may be made as outpatient professional services, the reasonable costs of the CAH in providing the services; and
- For professional services otherwise included within outpatient CAH services, the amounts that would otherwise be paid under Medicare if the services were not included as outpatient CAH services.

Section 403(d) of Public Law 106–113 added section 1834(g)(3) to the Act to further specify that payment amounts under this optional method are to be determined without regard to the amount of the customary or other charge. The amendment made by section 403(d) was effective for cost reporting periods beginning on or after October 1, 2000.

Section 202 of Public Law 106–554, amends section 1834(g) of the Act to provide that when a CAH elects the option to be paid for Medicare outpatient services under the reasonable costs for facility services plus fee schedule amounts for professional services method, Medicare will pay 115 percent of the amount it would otherwise pay for the professional services. This provision is effective for items and services furnished on or after July 1, 2001.

We are revising the regulations at § 413.70(b)(3) to reflect the change in the level of payment for professional services under the alternative payment method for outpatient CAH services.

C. Conforming Change—Conditions of Participation Relating to Compliance With Hospital requirements at Time of Application for CAH Designation (§ 485.612)

Under the law in effect prior to enactment of the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 (Public Law 106–113), CAH status was available to facilities only if they were hospitals at the time of their application for designation as CAHs. This requirement was implemented through regulations, at § 485.610 (Condition of Participation: Status and limitations) and § 485.612 (Condition of Participation: Compliance with hospital requirements at time of application). Section 403(c) of the Public Law 106–113 added subparagraphs (C) and (D) to section 1820(c)(2) of the Act to specify that recently closed facilities and facilities that had downsized from hospital status to being a clinic or health center would also be eligible to apply for CAH designation.

In the August 1, 2000 final rule (65 FR 47052), we revised our regulations at § 485.610 to reflect the provisions of section 403(c) of the Public Law 106–113. However, we inadvertently did not make a conforming change to § 485.612, which continues to state that the applicant facility must be a hospital with a provider agreement to participate in the Medicare program at the time it applies for designation as a CAH. To correct this oversight and reflect the provisions of section 403(c) in the regulations at § 485.612, we are revising § 485.612 to state that the requirement to have a provider agreement as a hospital at the time of application does not apply to recently closed facilities as described in § 485.610(a)(2) or to health clinics or health centers as described in § 485.610(a)(3).

XII. Payment for Bad Debts (Section 541 of Public Law 106–554 and 42 CFR 413.80)

Section 4451 of Public Law 105–33 required that allowable bad debt reimbursement for hospitals be reduced by 25 percent for cost reporting periods beginning during FY 1998, by 40 percent for cost reporting periods beginning during FY 1999, and by 45 percent for cost reporting periods beginning during a subsequent fiscal year.

Section 541 of Public Law 106–554 amended section 1861(v)(1)(T) thereby modifying the reduction in payment for Medicare beneficiary bad debt for hospitals made by section 4451 of Public Law 105–33. Specifically, this provision reduces the amount of bad debts otherwise treated as allowable reductions in revenue, attributable to the deductibles and coinsurance amounts, by 30 percent for cost reporting periods beginning during FY 2001 and later. Therefore, for cost reporting periods beginning during the year 2001 and later, hospital bad debt amounts otherwise allowable will be reimbursed at 70 percent of the total allowable amount. We are revising § 413.80 to implement this change.

XIII. Waiver of Notice of Proposed Rulemaking and Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, section 1871(b) of the Act provides that publication of a notice of proposed rulemaking is not required before a rule takes effect where ''a statute establishes a specific deadline for the implementation of the provision and the deadline is less than 150 days after the date of enactment of the statute in which the deadline is contained.'' In addition, we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.

On August 1, 2000, we published a final rule addressing FY 2001 payment rates and policies for prospective payment system hospitals and excluded hospitals and hospital units (65 FR 47054). Subsequently, on December 21, 2000, Public Law 106–554 was enacted. This public law contains a number of provisions relating to issues addressed in the final rule that have effective dates of October 1, 2000, April 1, 2001, or other dates prior to the end of FY 2001.

In accordance with section 1871(b) of the Act, publication of a notice of proposed rulemaking is not required before implementing the statutory provisions of Public Law 106–554 that take effect October 1, 2000 or April 1, 2001. In addition, notice and comment would be unnecessary because the provisions of Public Law 106–554 that are addressed in this rule do not permit the exercise of discretion. Delaying publication of the rule to provide for notice and a comment period would also be impracticable and contrary to the public interest because it is important that the rule be published as soon as possible, in order for the public to know how we are implementing the statutory provisions covered by the rule, and in order to revise our current regulations to conform with the changes mandated by Public Law 106–554.

We are providing a 30-day period for public comments on all of these provisions.

This rule has been determined to be a major rule as defined in Title 5, United State Code, section 804(2), that is, one with an anticipated annual effect of $100 million or more on the economy. Ordinarily, under 5 U.S.C. 801, as added by section 251 of Public Law 104–121, a major rule shall take effect 60 days after the later of (1) the

date a report on the rule is submitted to Congress or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines, if for good cause, the agency determines that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was unnecessary, impracticable and contrary to the public interest to complete notice and comment procedures before publication of this rule and to delay the effective date of this rule. Accordingly, pursuant to 5 U.S.C. 808, these regulations are effective April 1, 2001.

XIV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provisions of this interim final rule with comment period will be considered if we receive them by the date specified in the **DATES** section of this preamble.

XV. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Order 12866. Although not required to do so, due to the interim final nature of this rule, we have also examined the impacts of this rule under the criteria of the Regulatory Flexibility Act (RFA) Public Law 96–354, section 1102(b) of the Act, and the Unfunded Mandate Reform Act of 1995 (UMRA) Public Law 104–4. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have determined that this is a major rule within the meaning of Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all hospitals are considered small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule or a final rule preceded by a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any proposed rule or any final rule preceded by a proposed rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This interim final rule with comment period does not mandate any requirements for State, local, or tribal governments.

B. Anticipated Effects

We estimated the impact of the changes described in this interim final rule with comment period resulting from the passage of Public Law 106–554 on the inpatient prospective payment systems to be $1.04 billion. The changes, discussed separately below are as follows:

The effects of the change in the DSH payment reduction factor and the DSH payment qualification criteria as set forth by sections 211 and 303 of Public Law 106–554.

- The effects of introducing the option to base eligibility for Medicare dependent hospitals (MDHs), for hospitals otherwise qualifying for MDH status, on discharges during two of the three most recently audited cost reporting periods as directed by section 212 of Public Law 106–554.
- The total change in payments for hospitals, other than SCHs, including the increase in the update factor from market basket minus 1.1 percentage points, or 2.3 percent, to market basket plus 1.1 percentage points, or 4.5 percent, based on the policies in effect for the first half of FY 2001, relative to payments based on the policies in effect for the second half of FY 2001. (As directed by section 301 of Public Law 106–554). We estimate the financial impact of this provision will be $700 million.

Table 1 displays the estimated payment impacts of the provisions of Public Law 106–554 for all hospitals under the inpatient hospital prospective payment system. Specifically, this table compares simulated payments for hospitals using the policy and payment rate updates in effect for discharges occurring on or after October 1, 2000 and before April 1, 2001, to simulated payments using the policy changes and payment rate updates published in this interim final rule with comment. The hospital categories in the table are identical to those published in the August 1, 2000 final rule. Also, the simulation methodology here is identical to the methodology described in that final rule.

The estimated overall impact of the changes in policy and the update to the standardized amounts is a 2.9 percent increase in payments across all hospitals, and the average payment per case increased $202, from $6,883 to $7,085.

- The effects of the change to the IME adjustment factor as directed by section 302 of Public Law 106–554.
- The effects of expanding the 1996 rebasing option to all SCHs as directed by Section 213 of Public Law 106–554.
- The effects of the changes made to the TEFRA payment mechanism under section 1886(b) by sections 306 and 307(a) of 106–554.

1. Decrease In Reductions for DSH Payments and Changes in Treatment of Rural and Small Urban Disproportionate Share Hospitals.

Under section 303 of Public Law 106–554, reductions in the otherwise applicable DSH payment formula amounts would be 2 percent in FY 2001 and 3 percent in FY 2002. We estimate that the financial impact of this amendment from October 1, 2000 through FY 2002 will be $40 million. To implement the FY 2001 provision, DSH payments for discharges occurring on or after October 1, 2000 and before April 1, 2001, are reduced by 3 percent (which was the reduction in effect prior to enactment of Public Law 106–554), and for discharges occurring on or after April 1, 2001 and before October 1, 2001, DSH amounts would be reduced by only 1 percent.

Additionally, Section 211 of Public Law 106–554 amended section 1886(d)(5)(F)(v) of the Act, by lowering the thresholds by which certain classes of hospitals qualify for DSH. Specifically, for discharges occurring on or after April 1, 2001, the qualifying

disproportionate payment percentage is reduced to 15 percent for SCHs, RRCs, and other small rural and urban hospitals. Also, a formula will be used to calculate DSH adjustments for these groups of hospitals that have a DSH patient percentage equal to or greater than 15 percent and less than 19.3 percent. For SCHs and RRCs with a disproportionate patient percentage equal to or greater than 19.3 percent, but less than 30 percent, a flat 5.25 percent adjustment applies, and a formula again applies to the DSH adjustment for these same hospitals with a disproportionate patient percentage equal to or greater than 30 percent. A hospital that is both an SCH and an RRC, or a small rural hospital, receives a flat 5.25 percent adjustment if its disproportionate patient percentage is equal to or greater than 19.3 percent but less than 30 percent, and if that hospital has a disproportionate patient percentage equal to or greater than 30 percent, it receives the greater of the SCH or RRC adjustment. We estimate the financial impact of this amendment from October 2000 through FY 2002 will be $60 million.

In column 1 of Table 1 we present the combined effect of the two DSH provisions, as discussed in section III of this interim final rule with comment period. We compared estimated aggregate payments for the first half of FY 2001 to estimated aggregate payments for the second half of FY 2001 keeping all payment factors constant except those affected by the DSH changes. Because the criteria for qualifying for DSH payment status was changed as discussed above, more hospitals should be receiving DSH payments for the second half of FY 2001.

Comparing Table 1 of this section to the Table 1 in the Inpatient Prospective Payment System Final Rule that appeared in the August 1, 2000 **Federal Register** (65 FR 47192), there are significant increases in the estimated number of hospitals receiving DSH payments. Specifically, whereas 3,070 hospitals were estimated not to qualify for DSH payments for the first half of FY 2001, that number is expected to decrease to 1,914, meaning that for the second half of FY 2001, 1,156 more hospitals are expected to receive DSH payments. The 1,156 new DSH hospitals in our estimate are primarily small urban or rural hospitals, which are the same groups of hospitals targeted for assistance by Section 211 of Public Law 106–554.

For example, the DSH payment category for urban hospitals with fewer than 100 beds is estimated to increase by 284, from 72 hospitals in the first half of FY 2001 to 356 hospitals in the second half of FY 2001. Rural SCHs estimated to qualify for DSH payments rose by 389, from 149 in the first half of FY 2001 to 538 hospitals in the second half of FY 2001. RRCs appear to experience an increase of 83 providers, with the number of providers estimated to qualify for DSH payments moving from 56 to 139. Other rural DSH hospitals with fewer than 100 beds appear to benefit as well, with the number of those eligible for DSH payments estimated to increase by 364 from 103 to 467.

Overall, we estimate that hospitals experience a 0.4 percent increase in payments, with rural hospitals receiving an increase of 1.7 percent and large urban and other urban hospitals both receiving a 0.2 percent increase.

Rural DSH hospitals with between 0 and 100 beds are estimated to receive the largest increase, 4.1 percent. Urban DSH hospitals with between 0 and 100 beds are estimated to receive a 3.5 percent increase in payments. We anticipate that no hospitals were negatively impacted by these changes in DSH policy.

2. Changes to Qualifications for MDHs

Section 212 of Public Law 106–554 provides an option to base eligibility for an MDH on discharges during two of the three most recently audited cost reporting periods. An otherwise qualifying hospital would be able to be classified as an MDH if at least 60 percent of its inpatient days or discharges were attributable to Medicare Part A beneficiaries during two of the three most recently audited cost reporting periods, for which the Secretary has a settled cost report, effective with discharges on or after April 1, 2001.

To estimate the effect of this change we examined cost report data from 1994 through 1999, and selected all hospitals with settled and audited cost reports for each prospective payment system year (1994 through 1999). We then took these subsets of settled and audited cost reports and selected providers who met the criteria for MDH status and who had at least 60 percent of inpatient days or discharges attributable to Medicare Part A beneficiaries, for 1 year.

We then combined the sets of qualifying providers from each prospective payment system year during the period of 1994 through 1999 and selected those providers who met the 60 percent criterion for 2 out of 3 cost reports and would therefore meet the MDH criteria as stated in Section 212 of Public Law 106–554. Although we identified 139 hospitals through this analysis, these providers were already listed as MDH providers in our records. However, it is important to note that our most complete data set for hospital cost reports is still 1998 and we are therefore unable to measure the effects of this provision on the most recent data. Therefore, while the results of one analysis appear to indicate that this provision will not have the first half of FY 2001 to the second half of FY 2001. We have estimated the financial impact of this amendment to be $10 million.

3. Indirect Medical Education (IME)

Section 302 of the Public Law 106–554 modified the transition for the IME adjustment that was first established by Public Law 105–33 and revised by Public Law 106–113. Specifically, the new transition schedule (where *c* is represented in the following formula: $c * [(1 + \textit{resident-to-bed ratio})^{.405} - 1])$ is:

- For discharges occurring on or after October 1, 2000 and before April 1, 2001, *c* equals 1.54;
- For discharges occurring on or after April 1, 2001 and before October 1, 2001, *c* equals 1.66;
- For discharges occurring during FY 2002, *c* equals 1.66;
- For discharges occurring on or after October 1, 2002, *c* equals 1.35.

We have estimated the financial impact of this provision to be $200 million. To estimate the impact of this change, we compared estimated aggregate payments for the first half of FY 2001 to estimated aggregate payments for the second half of FY 2001, keeping all payment factors except those affected by the IME changes constant.

Overall, hospitals appear to be experiencing a 0.4 percent increase in payments, with large urban hospitals receiving a 0.6 percent increase and other urban hospitals receiving an increase of 0.3 percent. Rural hospitals are estimated to receive a 0.1 percent increase. Teaching hospitals with 100 or more residents are estimated to receive a 1.2 percent increase in payments. Additionally, urban hospitals in the New England region are projected to experience an 0.8 percent increase, while rural hospitals in the New England region are projected to experience an increase of 0.4 percent.

4. Sole Community Hospitals (SCHs)

Section 405 of the Public Law 106–113 included a 1996 rebasing option for cost reporting periods beginning October 1, 2000, that was limited to SCHs that received payment based on their hospital-specific rate for reporting periods beginning in 1999. This

amendment allowed eligible SCHs to use this 1996 target amount rather than either their FY 1982 or FY 1987 costs. Section 213 of Public Law 106–554 extends this rebasing option to all SCHs and provides that this extension is effective for cost reporting periods beginning on or after October 1, 2000.

In estimating the impact of this change, we compared estimated aggregate payments for the first half of FY 2001 to estimated aggregate payments for the second half of FY 2001, keeping all payment factors except those effected by the SCH changes constant. Overall, hospitals do not appear to be experiencing any change in payments due to this provision, though some categories of hospitals, for example rural SCH and RRC hospitals, are estimated to receive a 0.1 percent increase.

5. Hospitals and Hospital Units Excluded From the PPS

We are implementing sections 306 and 307(a) of Public Law 106–554 which makes several modifications to the TEFRA payment mechanism under section 1886(b). Section 306 amends section 1886(b)(1)(A) of the Act, as it applies to a psychiatric hospital or unit, to provide that if a psychiatric hospital or unit's net inpatient operating costs are less than, or equal to, the ceiling for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2001, the amount of bonus payment is the lower of 15 percent of the difference between the inpatient operating costs and the ceiling, or 3 percent of the ceiling.

Prior to enactment of Public Law 106–554, for cost reporting periods beginning before October 1, 1997, a hospital (or unit) that had net inpatient operating costs that were less than its ceiling was paid the lower of 50 percent of the difference between inpatient operating costs and the ceiling, or 5 percent of the ceiling. Section 4415 of Public Law 105–33 amended section 1886(b)(1)(A) of the Act to provide that for cost reporting periods beginning on or after October 1, 1997, the amount of the bonus payment would be based on the lower of 15 percent of the difference between the net inpatient operating costs and the ceiling, or 2 percent of the ceiling.

The impact on hospitals of the increase in the bonus payment from 2 percent to 3 percent depends on the hospital's or unit's total allowable net inpatient operating costs based on its current cost report. Because a hospital's or unit's cost reporting period generally covers a 12-month period of time and this provision is effective for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2001, the relevant cost data needed to determine the impact of this provision will not be available until sometime after October 1, 2001. Our initial estimate of the financial impact of this provision is $20 million; however, given the lack of available data we are unable to fully estimate the financial impact this provision will have on the Medicare program.

We are also implementing section 307(a) of Public Law 106–554 which amended section 1886(b)(3) of the Act to provide for a 2 percent increase to the wage-adjusted 75th percentile cap on the target amount for LTCHs, effective for cost reporting periods beginning during FY 2001. This provision is applicable to LTCHs that were subject to the cap for existing excluded providers, as specified in § 413.40(c).

In addition to the increase to the cap on the target amounts for LTCHs, section 307(a) of Public Law 106–554 also amends section 1886(b)(3) of the Act to provide for a 25 percent increase to the target amounts determined under 1886(b)(3)(A) of the Act for all LTCHs, effective for cost reporting periods beginning during FY 2001. Thus, this provision requires a revision to the determination of each LTCH's FY 2001 target amount as specified in § 413.40(c)(4). For cost reporting periods beginning during FY 2001, the hospital-specific target amount otherwise determined for a LTCH as specified in the regulations at § 413.40(c)(4)(ii) is multiplied by 1.25 (that is, increased by 25 percent). However, the revised FY 2001 target amount for the LTCH cannot exceed its wage-adjusted national cap as required by 1886(b)(3) of the Act, as amended by section 307(a) of Public Law 106–554.

In order to estimate the impact of the 25 percent increase in the hospital-specific target amount as well as the 2 percent increase in the LTCH cap, we adjusted the historical hospital-specific target amounts for each LTCH, as specified in § 413.40(c)(4)(iii)(A), by a factor of 1.25 (that is, the 25 percent increase). We then determined the wage-adjusted cap for these LTCHs and increased the cap by 2 percent to calculate the applicable cap on the hospital's adjusted target amount. An analysis of the best available data indicates that 64.6 percent of the LTCHs will benefit only from the 25 percent increase; in other words, these hospitals' target amounts were at least 25 percent below their cap. Our analysis also indicated that 22.9 percent of the hospitals will only benefit from the 2 percent increase in the wage-adjusted cap (their target amounts prior to the BIPA provision were equal to or exceeded the cap). The analysis also showed that 13.5 percent of the hospitals will benefit from both the 25 percent increase and the 2 percent increase provisions. These hospitals will not benefit from the full 25 percent increase to their target amounts because prior to this Public Law 106–554 provision their target amounts were not less than 25 percent below their cap. Thus, these hospitals received a portion of the 25 percent increase to their target amounts plus the 2 percent increase to the payment limitations.

The impact of the increases in hospital-specific target amounts and wage-adjusted caps for LTCHs was estimated based on FY 1998 cost reporting data as this was the most complete data source available. We note that these changes will also have somewhat of an impact on incentive payments, continuous improvement bonus payments, or other payment adjustment for excluded hospitals outlined in the regulations at § 413.40(d). However, in making this comparative analysis, we did not attempt to determine the impact on those payments. Our initial estimate of the financial impact of this provision is $10 million; however, given the lack of available data we are unable to fully estimate the financial impact this provision will have on the Medicare program.

6. Critical Access Hospitals (CAH)

Section 201(a) of Public Law 106–554 amends section 1834(g) of the Act to state that there will be no collection of coinsurance, deductible, copayments, or other type of cost sharing from Medicare beneficiaries with respect to outpatient clinical diagnostic laboratory services in a CAH. This provision also provides for the payment of those services on a reasonable cost basis. Furthermore, section 201(b) of Public Law 106–554 amends section 1833(a) of the Act by eliminating any reference to a CAH receiving payment for outpatient clinical diagnostic laboratory services on a fee schedule basis. These amendments are effective for services furnished on or after November 29, 1999.

There are approximately 365 facilities that qualify as CAHs. These CAHs are paid based on reasonable costs rather than a fee schedule amount for outpatient clinical diagnostic laboratory services furnished on or after November 29, 1999. We estimate that the financial impact of this amendment from November 29, 1999 through fiscal year 2001 will be $4.5 million.

Section 202 of Public Law 106–554 amends section 1834(g) of the Act to provide that when a CAH elects to be paid for Medicare outpatient services under the reasonable costs for facility services plus fee schedule amounts for professional services method, Medicare will pay 115 percent of the amount it would otherwise pay for the professional services. This provision is effective for items and services furnished on or after July 1, 2001.

At this point, our information indicates that very few CAHs have elected this option. We note that, with the enactment of this provision, which increases payment levels, that there may be an increase in the number of CAHs that make the election. We do not have adequate data to develop a reliable estimate of the financial impact of the change. Based on current levels of interest, we believe the financial impact will be minimal.

C. Overall Impact of Inpatient Operating Changes

Overall, the changes implemented by Public Law 106–554 are estimated to increase payments to providers by 2.9 percent. Given the 0.22 percentage increase in the update factor for the inpatient hospital payment rates as discussed in section V. of this interim final rule, the increase in hospitals eligible for DSH payments, the changes to the DSH formulas and the increase in the IME adjustment factor, this is not suprising. Additionally, the lowered threshold for outlier payments enabled some classes of providers to more easily qualify for outlier status. For example, urban hospitals with neither DSH nor IME are estimated to experience a 0.1 percent increase from each of those two provisions due to the effects of the provisions on payment distribution and outliers. Therefore, it appears that all classes of hospitals in this analysis will benefit from the changes instituted by Public Law 106–554.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR THE SECOND HALF OF FY 2001 (DISCHARGES OCCURRING ON OR AFTER APRIL 1, 2001 AND BEFORE OCTOBER 1, 2001) OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DSH changes[2] (1)	IME changes[3] (2)	SCH changes[4] (3)	All FY 2001 changes[5] (4)
By Geographic Location:					
All Hospitals	4,888	0.4	0.4	0.0	2.9
Urban Hospitals	2,756	0.2	0.5	0.0	2.9
Large Urban Areas	1,573	0.2	0.6	0.0	3.0
Other Urban Areas	1,183	0.2	0.3	0.0	2.7
Rural Hospitals	2,132	1.7	0.1	0.0	3.3
Bed Size (Urban):					
0–99 Beds	720	1.5	0.1	0.0	3.8
100–199 Beds	944	0.2	0.2	0.0	2.6
200–299 Beds	548	0.1	0.3	0.0	2.6
300–499 Beds	401	0.1	0.5	0.0	2.9
500 or More Beds	143	0.2	1.0	0.0	3.3
Bed Size (Rural):					
0–49 Beds	1,229	1.7	0.0	0.0	3.1
50–99 Beds	535	2.0	0.0	0.0	3.4
100–149 Beds	219	1.7	0.1	0.0	3.3
150–199 Beds	81	1.6	0.1	0.1	3.4
200 or More Beds	68	1.3	0.2	0.1	3.6
Urban by Census Division:					
New England	146	0.1	0.8	0.1	3.2
Middle Atlantic	422	0.1	0.6	0.0	3.0
South Atlantic	404	0.3	0.3	−0.1	2.7
East North Central	467	0.1	0.6	0.0	2.9
East South Central	161	0.2	0.3	0.0	2.7
West North Central	188	0.2	0.5	0.0	2.8
West South Central	350	0.4	0.3	0.0	2.9
Mountain	133	0.2	0.3	0.0	2.4
Pacific	440	0.4	0.4	0.0	2.9
Puerto Rico	45	0.1	0.2	0.1	2.5
Rural by Census Division:					
New England	52	0.9	0.4	0.0	2.8
Middle Atlantic	79	1.4	0.2	0.1	3.4
South Atlantic	277	2.0	0.1	0.0	3.9
East North Central	279	1.0	0.0	0.1	2.7
East South Central	266	2.4	0.0	0.0	4.5
West North Central	492	0.8	0.1	0.0	2.1
West South Central	341	2.6	0.0	0.0	4.1
Mountain	201	1.3	0.0	0.0	1.7
Pacific	140	2.2	0.1	0.0	3.4
Puerto Rico	5	0.3	0.0	0.1	2.5
By Payment Categories:					
Urban Hospitals	2,838	0.2	0.5	0.0	2.9
Large Urban	1,665	0.2	0.6	0.0	3.0
Other Urban	1,168	0.2	0.3	0.0	2.7
Rural Hospitals	2,055	1.8	0.1	0.0	3.3
Teaching Status:					
Non-Teaching	3,770	0.7	0.1	0.0	2.8
Fewer Than 100 Residents	876	0.2	0.4	0.1	2.7

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR THE SECOND HALF OF FY 2001 (DISCHARGES OCCURRING ON OR AFTER APRIL 1, 2001 AND BEFORE OCTOBER 1, 2001) OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DSH changes[2] (1)	IME changes[3] (2)	SCH changes[4] (3)	All FY 2001 changes[5] (4)
100 or More Residents	242	0.1	1.2	0.0	3.5
Disproportionate Share Hospitals (DSH):					
Non–DSH	1,914	0.0	0.3	−0.2	2.4
Urban DSH:					
100 Beds or More	1,390	0.2	0.6	0.0	2.9
Fewer Than 100 Beds	356	3.5	0.1	0.0	5.8
Rural DSH:					
Sole Community (SCH)	538	1.6	0.0	0.0	2.1
Referral Centers (RRC)	139	2.5	0.1	0.0	4.4
Other Rural DSH Hospitals:					
100 Beds or More	84	2.9	0.1	0.1	5.1
Fewer Than 100 Beds	467	4.1	0.0	0.1	6.4
Urban Teaching and DSH:					
Both Teaching and DSH	748	0.2	0.8	0.0	3.1
Teaching and No DSH	305	0.0	0.6	−0.1	2.8
No Teaching and DSH	998	0.5	0.1	0.0	2.8
No Teaching and No DSH	787	0.1	0.1	0.1	2.4
Rural Hospital Types:					
Nonspecial Status Hospitals	829	2.8	0.0	0.1	5.0
RRC	150	1.8	0.2	0.0	4.2
SCH	662	0.8	0.0	0.0	0.8
MDH	352	1.6	0.0	0.0	3.8
SCH and RRC	57	1.3	0.1	0.0	1.8
Type of Ownership:					
Voluntary	2,834	0.4	0.5	0.0	2.9
Proprietary	776	0.6	0.2	0.1	2.9
Government	1,278	0.8	0.5	−0.3	3.3
Unknown	0	0.0	0.0	0.0	0.0
Medicare Utilization as a Percent of Inpatient Days:					
0–25	381	0.4	0.9	0.0	3.4
25–50	1,830	0.3	0.7	0.0	3.1
50–65	1,893	0.5	0.2	0.1	2.8
Over 65	699	0.8	0.1	0.1	2.9
Unknown	85	−3.0	−2.5	−3.5	−0.1

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1999, and hospital cost report data are from reporting periods beginning in FY 1997 and FY 1998.
[2] This column displays the payment impact of the change in DSH payment policy between the first and second half of FY 2001.
[3] This column displays the payment effects of the increase in the IME adjustment factor between the first and second half of FY 2001.
[4] This column displays the payment impact of allowing all SCHs to rebase using 1996 cost data between the first and second half of FY 2001.
[5] This column shows changes in payments from the first half of FY 2001 to the second half of FY 2001. It incorporates all of the changes displayed in columns 1, 2, and 3. It also displays the impact of the increase in the FY 2001 update rates, the difference in outlier offsets from FY 2000 to FY 2001, and the increase to payments from the IME adjustment and DSH changes taking effect during FY 2001. It also reflects the SCHs rebasing provision contained in Public Law 106–554.

D. Impact of Changes in the Capital Prospective Payment System

In this impact analysis, we dynamically model the impact of the capital prospective payment system for the periods from October 2000 through March 2001 and April 2001 through September 2001. We have used the actuarial model described in Appendix B of the August 1, 2001 final rule (65 FR 47204 through 47207) to estimate the changes in capital-related costs. Table III shows the effect of the capital prospective payment system on low capital costs hospitals and high capital costs hospitals by their capital prospective payment system transition period payment methodology (fully prospective or hold harmless). Assuming no behavioral changes, Table III displays the percentage change in payments per discharge for the periods between October 2000 through March 2001 and April 2001 through September 2001. Overall, there will be no significant impact on capital prospective payment system payments. We project low cost hospitals will experience a 0.04 percent decrease in payments per case, while high cost hospitals will experience a 0.16 percent increase in payments per case.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR APRIL 2001–SEPTEMBER 2001 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over Oct-00–Mar-01
10/2000–03/2001 Payments per Discharge:									
Low Cost Hospitals	3,188	6,835,493	$637.91	99.74	.....	$2.42	$9.69	$650.02	.....
Fully Prospective ...	3,014	6,356,216	638.58	100.00	.....	.....	9.20	647.79	.....
100% Federal Rate	159	445,296	638.34	100.00	.....	.....	4.35	642.69	.....
Hold Harmless	15	33,981	506.60	60.11	.....	486.54	170.96	1,164.09	.....
High Cost Hospitals	1,594	4,146,176	653.32	98.38	.....	15.35	21.47	690.14	.....
100% Federal Rate	1,390	3,793,344	664.47	100.00	.....	.....	10.65	675.12	.....
Hold Harmless	204	352,832	533.52	80.86	.....	180.41	137.76	851.69	.....
Total Hospitals	4,782	10,981,669	643.73	99.21	.....	7.30	14.14	665.17	.....
04/2001–09/2001 Payments per Discharge:									
Low Cost Hospitals	3,188	6,835,493	637.72	99.74	.....	2.42	9.63	649.77	−0.0
Fully Prospective ...	3,014	6,356,216	638.34	100.00	.....	.....	9.15	647.49	−0.0
100% Federal Rate	159	445,296	638.64	100.00	.....	.....	4.37	643.01	0.0
Hold Harmless	15	33,981	509.14	60.15	.....	486.54	168.45	1,164.13	0.0
High Cost Hospitals	1,594	4,146,176	654.60	98.38	.....	15.35	21.28	691.23	0.1
100% Federal Rate	1,390	3,793,344	665.70	100.00	.....	.....	10.55	676.25	0.1
Hold Harmless	204	352,832	535.28	80.86	.....	180.41	136.65	852.34	0.0
Total Hospitals	4,782	10,981,669	644.09	99.21	.....	7.30	14.03	665.42	0.0

Table IV presents a cross-sectional summary of hospital groupings (geographic location, region, and payment classification) by capital prospective payment system transition period payment methodology generated by our actuarial model. The percentage of hospitals within a particular hospital grouping is not projected to change significantly from those shown in the Table IV of the impact section of the August 1, 2001 final rule (65 FR 47201 through 47202).

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total number of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,782	4.6	32.4	63.0
Large urban areas (populations over 1 million)	1,516	4.3	41.0	54.7
Other urban areas (populations of 1 million or fewer)	1,147	5.8	39.5	54.7
Rural areas	2,119	4.1	22.4	73.5
Urban hospitals	2,663	5.0	40.3	54.7
0–99 beds	652	6.3	33.6	60.1
100–199 beds	927	7.2	45.6	47.1
200–299 beds	542	3.3	41.3	55.4
300–499 beds	400	0.8	37.0	62.3
500 or more beds	142	2.1	42.3	55.6
Rural hospitals	2,119	4.1	22.4	73.5
0–49 beds	1,219	2.9	16.6	80.6
50–99 beds	532	6.8	26.9	66.4
100–149 beds	219	5.9	35.2	58.9
150–199 beds	81	2.5	25.9	71.6
200 or more beds	68	1.5	47.1	51.5
By Region:				
Urban by Region	2,663	5.0	40.3	54.7
New England	145	0.7	25.5	73.8
Middle Atlantic	407	2.9	34.6	62.4
South Atlantic	396	5.6	51.8	42.7
East North Central	454	4.2	29.7	66.1
East South Central	153	8.5	46.4	45.1
West North Central	181	6.1	37.0	56.9
West South Central	326	8.9	58.0	33.1
Mountain	124	4.8	48.4	46.8

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total number of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Pacific	432	4.2	36.3	59.5
Puerto Rico	45	2.2	26.7	71.1
Rural by Region	2,119	4.1	22.4	73.5
New England	52	0.0	23.1	76.9
Middle Atlantic	78	5.1	19.2	75.6
South Atlantic	276	2.2	33.3	64.5
East North Central	279	3.9	16.5	79.6
East South Central	265	3.4	32.8	63.8
West North Central	490	3.3	14.5	82.2
West South Central	335	4.5	26.6	69.0
Mountain	200	9.5	15.0	75.5
Pacific	139	5.0	23.7	71.2
By Payment Classification:				
Large urban areas (populations over 1 million)	1,612	4.2	41.3	54.5
Other urban areas (populations of 1 million or fewer)	1,133	6.0	38.8	55.2
Rural areas	2,037	4.1	21.8	74.1
Teaching Status:				
Non-teaching	3,673	5.1	31.6	63.3
Fewer than 100 residents	871	2.9	35.9	61.2
100 or more residents	238	2.1	32.4	65.5
Disproportionate Share Hospitals (DSH):				
Non-DSH	1,841	4.5	29.2	66.3
Urban DSH:				
100 or more beds	1,377	4.6	42.6	52.8
Less than 100 beds	342	5.8	32.2	62.0
Rural DSH:				
Sole Community (SCH/EACH)	538	6.1	20.1	73.8
Referral Center (RRC/EACH)	139	6.5	36.0	57.6
Other Rural:				
100 or more beds	84	1.2	36.9	61.9
Less than 100 beds	461	2.0	27.3	70.7
Urban teaching and DSH:				
Both teaching and DSH	741	2.7	36.7	60.6
Teaching and no DSH	303	2.6	33.7	63.7
No teaching and DSH	978	6.5	43.4	50.1
No teaching and no DSH	723	6.1	42.5	51.5
Rural Hospital Types:				
Non special status hospitals	817	1.5	24.0	74.5
RRC/EACH	150	2.7	36.0	61.3
SCH/EACH	662	8.5	18.3	73.3
Medicare-dependent hospitals (MDH)	351	1.4	16.5	82.1
SCH, RRC and EACH	57	10.5	26.3	63.2
Type of Ownership:				
Voluntary	2,520	4.5	32.4	63.1
Proprietary	653	7.2	57.1	35.7
Government	1,093	4.1	19.2	76.7
Medicare Utilization as a Percent of Inpatient Days:				
0–25	367	5.4	27.5	67.0
25–50	1,820	4.3	35.1	60.7
50–65	1,882	4.7	31.2	64.1
Over 65	688	4.8	32.1	63.1

In Table V we present the results of the cross-sectional analysis using the results from our actuarial model and the aggregate impact resulting from section 301 of Public Law 106–554 that will affect capital prospective payment system payments for discharges occurring on or after April 1, 2001 and before October 1, 2001. Our comparison of payments for the periods from October 2000 through March 2001 and April 2001 through September 2001 by geographic location, region, payment classification, and type of ownership shows no significant effect (ranging from −0.2 percent to 0.2 percent) on payments for hospitals in all groupings.

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[October 2000–March 2001 Payments Compared to April 2001–September 2001 Payments]

	Number of hospitals	Average Oct 00–Mar 01 payments/case	Average Apr 01–Sept 01 payments/case	All changes	Portion attributable to Federal rate change
By Geographic Location:					
All hospitals	4,782	665	665	0.0	0.1
Large urban areas (populations over 1 million)	1,516	772	773	0.1	0.1
Other urban areas (populations of 1 million or fewer)	1,147	653	653	0.0	0.0
Rural areas	2,119	449	449	−0.1	−0.1
Urban hospitals	2,663	720	720	0.1	0.1
0–99 beds	652	518	518	0.1	0.1
100–199 beds	927	630	630	0.0	0.0
200–299 beds	542	684	685	0.0	0.1
300–499 beds	400	754	754	0.1	0.1
500 or more beds	142	923	924	0.1	0.1
Rural hospitals	2,119	449	449	−0.1	−0.1
0–49 beds	1,219	378	377	−0.2	−0.2
50–99 beds	532	429	429	−0.2	−0.2
100–149 beds	219	461	460	−0.2	−0.1
150–199 beds	81	489	489	−0.1	−0.1
200 or more beds	68	547	548	0.1	0.2
By Region:					
Urban by Region	2,663	720	720	0.1	0.1
New England	145	751	750	0.0	0.0
Middle Atlantic	407	797	798	0.1	0.1
South Atlantic	396	693	694	0.1	0.1
East North Central	454	692	692	0.0	0.0
East South Central	153	660	660	0.0	0.1
West North Central	181	715	715	0.1	0.1
West South Central	326	678	680	0.2	0.2
Mountain	124	723	723	0.0	0.0
Pacific	432	804	805	0.1	0.2
Puerto Rico	45	311	311	0.0	0.0
Rural by Region	2,119	449	449	−0.1	−0.1
New England	52	544	542	−0.3	−0.3
Middle Atlantic	78	469	468	0.0	0.3
South Atlantic	276	462	462	0.0	0.0
East North Central	279	459	458	−0.2	−0.2
East South Central	265	411	411	0.0	0.0
West North Central	490	440	438	−0.3	−0.3
West South Central	335	404	404	−0.1	−0.1
Mountain	200	478	477	−0.1	−0.1
Pacific	139	543	543	−0.1	−0.1
By Payment Classification:					
All hospitals	4,782	665	665	0.0	0.1
Large urban areas (populations over 1 million)	1,612	763	764	0.1	0.1
Other urban areas (populations of 1 million or fewer)	1,133	650	651	0.0	0.0
Rural areas	2,037	446	445	−0.1	−0.1
Teaching Status:					
Non-teaching	3,673	549	549	0.0	0.0
Fewer than 100 Residents	871	694	695	0.0	0.1
100 or more Residents	238	1,022	1,023	0.1	0.1
Urban DSH:					
100 or more beds	1,377	759	760	0.1	0.1
Less than 100 beds	342	506	506	−0.1	−0.1
Rural DSH:					
Sole Community (SCH/EACH)	538	420	419	−0.1	−0.2
Referral Center (RRC/EACH)	139	505	505	0.0	0.2
Other Rural:					
100 or more beds	84	422	421	−0.2	−0.2
Less than 100 beds	461	379	378	−0.2	−0.2
Urban teaching and DSH:					
Both teaching and DSH	741	837	837	0.1	0.1
Teaching and no DSH	303	729	729	0.0	0.0
No teaching and DSH	978	609	609	0.0	0.1
No teaching and no DSH	723	600	601	0.1	0.1
Rural Hospital Types:					
Non special status hospitals	817	394	394	−0.2	−0.2
RRC/EACH	150	515	514	−0.1	−0.1
SCH/EACH	662	448	448	−0.1	−0.1

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[October 2000–March 2001 Payments Compared to April 2001–September 2001 Payments]

	Number of hospitals	Average Oct 00–Mar 01 payments/case	Average Apr 01–Sept 01 payments/case	All changes	Portion attributable to Federal rate change
Medicare-dependent hospitals (MDH)	351	377	376	−0.2	−0.2
SCH, RRC and EACH	57	516	517	0.0	0.3
Type of Ownership:					
Voluntary	2,520	680	680	0.0	0.0
Proprietary	653	643	644	0.2	0.2
Government	1,093	602	602	0.0	0.0
Medicare Utilization as a Percent of Inpatient Days:					
0–25	367	838	839	0.1	0.1
25–50	1,820	763	764	0.1	0.1
50–65	1,882	590	590	0.0	0.0
Over 65	688	528	528	0.0	0.0

D. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

Although not required to do so, we have examined this interim final rule with comment period, under the criteria set forth in, Executive Order 13132 and have determined that this interim final rule with comment period will not have any negative impact on the rights, rules, and responsibilities of State, local, or tribal governments.

E. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as follows:

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.152 is amended by revising paragraph (k)(2) to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(k) * * *

(2) Payment for CAH outpatient services is subject to the applicable Medicare Part B deductible and coinsurance amounts, except as described in § 413.70(b)(2)(iii) of this chapter, with Part B coinsurance being calculated as 20 percent of the customary (insofar as reasonable) charges of the CAH for the services.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.63 is amended by revising paragraph(s) to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984

* * * * *

(s) *Applicable percentage change for fiscal year 2001.* The applicable percentage change for discharges occurring in fiscal year 2001 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for hospitals in all areas as follows:

(1) For discharges occurring on October 1, 2000 or before April 1, 2001 the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for sole community hospitals and the increase in the market basket index minus 1.1 percentage points for other hospitals in all areas; and

(2) For discharges occurring on April 1, 2001 or before October 1, 2001 the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for sole community hospitals and the increase in the market basket index plus 1.1 percentage points for other hospitals in all areas.

* * * * *

3. Section 412.77 is amended by:

A. Revising the section heading.

B. Revising paragraph (a)(1).

C. Removing paragraph (a)(2).

D. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3).

§ 412.77 Determination of the hospital-specific rate for inpatient operating costs for sole community hospitals based on a Federal fiscal year 1996 base period

(a) * * *

(1) This section applies to a hospital that has been designated as a sole community hospital, as described in

§ 412.92. If the 1996 hospital-specific rate exceeds the rate that would otherwise apply, that is, either the Federal rate under § 412.63 or the hospital-specific rates for either fiscal year 1982 under § 412.73 or fiscal year 1987 under § 412.75, this 1996 rate will be used in the payment formula set forth in § 412.92(d)(1).

* * * * *

4. Section 412.92 is amended by revising paragraphs (d)(1)(iv), (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) * * *

(1) * * *

(iv) For cost reporting periods beginning on or after October 1, 2000, the hospital-specific rate as determined under § 412.77 (calculated under the transition schedule set forth in paragraph (d)(2) of this section).

(2) * * *

(i) For Federal fiscal year 2001, the hospital-specific rate is the sum of 75 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 25 percent of the hospital-specific rate as determined under § 412.77.

(ii) For Federal fiscal year 2002, the hospital-specific rate is the sum of 50 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 50 percent of the hospital-specific rate as determined under § 412.77.

(iii) For Federal fiscal year 2003, the hospital-specific rate is the sum of 25 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 75 percent of the hospital-specific rate as determined under § 412.77.

* * * * *

5. Section 412.105 is amended by:

A. Republishing the introductory text of paragraphs (d) and (d)(3).

B. Revising paragraph (d)(3)(v).

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(d) *Determination of education adjustment factor.* Each hospital's education adjustment factor is calculated as follows:

* * * * *

(3) *Step three.* The factor derived from completing steps one and two is multiplied by 'c', and where 'c' is equal to the following:

* * * * *

(v) For fiscal year 2001—

(A) For discharges occurring on or after October 1, 2000 and before April 1, 2001, 1.54.

(B) For discharges occurring on or after April 1, 2001 and before October 1, 2001, the adjustment factor is determined as if ''c'' equaled 1.66, rather than 1.54. This payment increase will not apply to discharges occurring after fiscal year 2001 and will not be taken into account in calculating the payment amounts applicable for discharges occurring after fiscal year 2001.

* * * * *

6. Section 412.106 is amended by:

A. Republishing the introductory text to paragraph (c)(1).

B. Revising paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv).

C. Revising paragraphs (d)(2)(ii)(A), (d)(2)(ii)(B), (d)(2)(ii)(C), and (d)(2)(ii)(D).

D. Revising paragraphs (d)(2)(iii) and (d)(2)(iv).

E. Revising paragraph (e)(4).

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(c) * * *

(1) The hospital's disproportionate patient percentage, as determined under paragraph (b)(5) of this section, is at least equal to one of the following:

(i) 15 percent, if the hospital is located in an urban area, and has 100 or more beds, or is located in a rural area and has 500 or more beds.

(ii) 30 percent for discharges occurring before April 1, 2001, and 15 percent for discharges occurring on or after April 1, 2001, if the hospital is located in a rural area and either has more than 100 beds and fewer than 500 beds or is classified as a sole community hospital under § 412.92.

(iii) 40 percent for discharges before April 1, 2001, and 15 percent for discharges occurring on or after April 1, 2001, if the hospital is located in an urban area and has fewer than 100 beds.

(iv) 45 percent for discharges before April 1, 2001, and 15 percent for discharges occurring on or after April 1 2001, if the hospital is located in a rural area and has 100 or fewer beds.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) If the hospital is classified as a rural referral center, for discharges prior to April 1, 2001, the payment adjustment factor is 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent. For discharges occurring on or after April 1, 2001, the following applies:

(*1*) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(*2*) If the hospital's disproportionate patient percentage is greater than 19.3 percent and less than 30 percent, the payment adjustment factor is 5.25 percent.

(*3*) If the hospital's disproportionate patient percentage is greater than or equal to 30 percent, the applicable payment adjustment factor is 5.25 percent plus 60 percent of the difference between 30 percent and the hospital's disproportionate patient percentage.

(B) If the hospital is classified as a sole community hospital, for discharges prior to April 1, 2001, the payment adjustment factor is 10 percent. For discharges occurring on or after April 1, 2001, the following applies:

(*1*) If the hospital's disproportionate patient percentage is less than 19.3 percent, the adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(*2*) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent and less than 30 percent, the payment adjustment factor is 5.25 percent.

(*3*) If the hospital's disproportionate patient percentage is equal to or greater than 30 percent the applicable payment adjustment factor is 10 percent.

(C) If the hospital is classified as both a rural referral center and a sole community hospital, the payment adjustment factor is:

(*1*) For discharges occurring before April 1, 2001, the greater of—

(*i*) 10 percent; or

(*ii*) 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent.

(*2*) For discharges occurring on or after April 1, 2001, the greater of the adjustments determined under paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section.

(D) If the hospital is classified as a rural hospital and is not classified as either a sole community hospital or a rural referral center, and has 100 or more beds, for discharges prior to April 1, 2001, the payment adjustment factor is 4 percent. For discharges occurring on or after April 1, 2001, the following applies:

(*1*) If the hospital's disproportionate patient percentage is less than 19.3 percent the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(*2*) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent the applicable payment adjustment factor is 5.25 percent.

(iii) If the hospital meets the criteria of paragraph (c)(1)(iii) of this section, the payment adjustment factor is as follows:

(A) For discharges occurring before April 1, 2001, 5 percent.

(B) For discharges occurring on or after April 1, 2001:

(*1*) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(*2*) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent, the applicable payment adjustment factor is 5.25 percent.

(iv) If the hospital meets the criteria of paragraph (c)(1)(iv) of this section, the payment adjustment factor is as follows:

(A) For discharges occurring before April 1, 2001, 5 percent.

(B) For discharges occurring on or after April 1, 2001:

(*1*) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(*2*) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent, the applicable payment adjustment factor is 5.25 percent.

* * * * *

(e) * * *

(4) For FY 2001:

(i) For discharges occurring on or after October 1, 2000 and before April 1, 2001, 3 percent.

(ii) For discharges occurring on or after April 1, 2001 and before October 1, 2001, 1 percent.

* * * * *

7. Section 412.108 is amended by:

A. Revising paragraphs (a)(1)(iii) introductory text and (b).

B. Adding a new paragraph (a)(1)(iii)(C).

C. Adding a sentence at the end of (d)(3)(iii).

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

(a) * * *

(1) * * *

(iii) At least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits during the hospital's cost reporting period or periods as follows, subject to the provisions of paragraph (a)(1)(iv) of this section:

* * * * *

(C) At least two of the last three most recent audited cost reporting periods for which the Secretary has a settled cost report.

* * * * *

(b) *Classification procedures.* The fiscal intermediary determines whether a hospital meets the criterion in paragraph (a) of this section. A hospital must notify its fiscal intermediary to be considered for MDH status based on the criterion under paragraph (a)(1)(iii)(C) of this section. Any hospital that believes it meets this criterion to qualify as an MDH, based on at least two of the three most recently audited cost reporting periods, must submit a written request to its intermediary. The hospital's request must be submitted within 180 days from the date of the notice of amount of program reimbursement (NPR) for the cost reporting period in question. The intermediary will make its determination and notify the hospital within 180 days from the date that it receives the hospital's request and all of the required documentation. If a hospital disagrees with an intermediary's determination, it should notify its intermediary and submit documentable evidence that it meets the criteria. The intermediary determination is subject to review under subpart R of part 405 of this chapter. The time required by the intermediary to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for such a review.

* * * * *

(d) * * *

(3) * * *

(iii) * * * The time required by the intermediary to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.40 is amended by:

A. Republishing the introductory text of paragraph (c)(4).

B. Revising paragraphs (c)(4)(iii) introductory text and (c)(4)(iii)(A).

C. Republishing the introductory text of paragraphs (c)(4)(iii)(B) and (c)(4)(iii)(B)(*4*).

D. Revising paragraph (c)(4)(iii)(B)(*4*)(*i*).

E. Revising paragraph (d)(2).

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) * * *

(4) *Target amounts.* The intermediary will establish a target amount for each hospital. The target amount for a cost reporting period is determined as follows:

* * * * *

(iii) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the target amount is the lower of the amounts specified in paragraph (c)(4)(iii)(A) or (c)(4)(iii)(B) of this section.

(A) The hospital-specific target amount.

(*1*) In the case of all hospitals and units, except long-term care hospitals for cost reporting periods beginning on or after October 1, 2001, the hospital-specific target amount is the net allowable costs in a base period increased by the applicable update factors.

(*2*) In the case of long-term care hospitals, for cost reporting periods beginning on or after October 1, 2001, the hospital-specific target amount is the net allowable costs in a base period increased by the applicable update factors multiplied by 1.25.

* * * * *

(B) One of the following for the applicable cost reporting period—

* * * * *

(*4*) For cost reporting periods beginning during fiscal years 2001 through 2002—

(*i*) The amounts determined under paragraph (c)(4)(iii)(B)(3)(i) of this section are: increased by the market basket percentage up through the subject period; or in the case of a long-term care hospital, for cost reporting periods beginning on or after October 1, 2001, the amounts determined under paragraph (c)(4)(iii)(B)(*3*)(*i*) of this section increased by the market basket percentage up through the subject period and further increased by 2 percent.

* * * * *

(d) * * *

(2) *Net inpatient operating costs are less than or equal to the ceiling.*

(i) For cost reporting periods beginning on or after October 1, 1997, if a hospital's allowable net inpatient operating costs do not exceed the hospital's ceiling, payment to the hospital will be determined on the basis of the lower of the—

(A) Net inpatient operating costs plus 15 percent of the difference between inpatient operating costs and the ceiling; or

(B) Net inpatient operating costs plus 2 percent of the ceiling.

(ii) For psychiatric hospitals and units, for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2001, if a hospital's allowable net inpatient operating costs do not exceed the hospital's ceiling, payment to the hospital will be determined on the basis of the lower of the—

(A) Net inpatient operating costs plus 15 percent of the difference between inpatient operating costs and the ceiling; or

(B) Net inpatient costs plus 3 percent of the ceiling.

* * * * *

3. Section 413.70 is amended by revising paragraphs (b)(2)(ii), (b)(2)(iii), (b)(3)(ii)(B), and (b)(3)(iii).

§ 413.70 Payment for services of a CAH.

* * * * *

(b) * * *

(2) * * *

(ii) Payment to a CAH under paragraph (b)(2) of this section does not include any costs of physician services or other professional services to CAH outpatients and, other than for clinical diagnostic laboratory tests, is subject to the Part B deductible and coinsurance amounts as determined under §§ 410.152(k), 410.160, and 410.161 of this chapter.

(iii) Payment for outpatient clinical diagnostic laboratory tests is not subject to the Medicare Part B deductible and coinsurance amounts. Payment to a CAH for clinical diagnostic laboratory tests will be made on a reasonable cost basis under this section only if the individuals are outpatients of the CAH, as defined in § 410.2 of this chapter, at the time the specimens are collected. Clinical diagnostic laboratory tests performed for persons who are not patients of the CAH when the specimens are collected will be made in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Social Security Act.

(3) * * *

(ii) * * *

(B) For professional services otherwise payable to the physician or other practitioner, 115 percent of the amounts that otherwise would be paid for the services if the CAH had not elected payment under this method.

(iii) Payment to a CAH, other than for clinical diagnostic laboratory tests, is subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152(k), 410.160, and 410.161 of this chapter.

* * * * *

4. Section 413.80 is amended by revising paragraph (h)(3) and adding a new paragraph (h)(4).

§ 413.80 Bad debts, charity, and courtesy allowances.

* * * * *

(h) * * *

(3) For cost reporting periods beginning during fiscal year 2000, by 45 percent.

(4) For cost reporting periods beginning during a subsequent fiscal year, by 30 percent.

* * * * *

5. Section 413.86 is amended by revising paragraph (d)(4) to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(d) * * *

(4) *Step four.* Effective for portions of cost reporting periods occurring on or after January 1, 2000, the product derived from step three is reduced by a percentage equal to the ratio of the Medicare+Choice nursing and allied health payment ''pool'' for the current calendar year as described at § 413.87(f), to the projected total Medicare+Choice direct GME payments made to all hospitals for the current calendar year.

* * * * *

6. Section 413.87 is amended by:

A. Redesignating the introductory text of (c) as (c)(1) introductory text.

B. Redesignating paragraphs (c)(1) and (c)(2) as paragraphs (c)(1)(i) and (c)(1)(ii) respectively.

C. Revising the newly redesignated paragraph (c)(1).

D. Adding a new paragraph (c)(2).

E. Revising the introductory text of paragraph (d).

F. Revising paragraph (d)(3)

G. Redesignating paragraph (e) as paragraph (f).

H. Adding a new paragraph (e).

I. Revising newly redesignated paragraphs (f)(1) introductory text, (f)(1)(ii), and (f)(2).

§ 413.87 Payments for Medicare+Choice nursing and allied health education programs.

* * * * *

(c) *Qualifying conditions for payment.*

(1) For portions of cost reporting periods occurring on or after January 1, 2000 and before January 1, 2001, a hospital that operates and receives payment for a nursing or allied health education program under § 413.85 may receive an additional payment amount associated with Medicare+Choice utilization. The hospital may receive the additional payment amount, which is calculated in accordance with the provisions of paragraph (d) of this section, if both of the conditions specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section are met.

(i) The hospital must have received Medicare reasonable cost payment for an approved nursing or allied health education program under § 413.85 in its cost reporting period(s) ending in the fiscal year that is 2 years prior to the current calendar year. (For example, if the current year is calendar year 2000, the fiscal year that is 2 years prior to calendar year 2000 is FY 1998.) For a hospital that first establishes a nursing or allied health education program after FY 1998 and receives reasonable cost payment for the program as specified under § 413.85 after FY 1998, the hospital is eligible to receive an additional payment amount in a calendar year that is 2 years after the respective fiscal year so long as the hospital also meets the condition under paragraph (c)(1(ii) of this section.

(ii) The hospital must be receiving reasonable cost payment for an approved nursing or allied health education program under § 413.85 in the current calendar year.

(2) For portions of cost reporting periods occurring on or after January 1, 2001, in addition to meeting the conditions specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section, the hospital must have had a Medicare+Choice utilization greater

than zero in its cost reporting period(s) ending in the fiscal year that is 2 years prior to the current calendar year.

* * * * *

(d) *Calculating the additional payment amount for portions of cost reporting periods occurring on or after January 1, 2000 and before January 1, 2001.* For portions of cost reporting periods occurring on or after January 1, 2000 and before January 1, 2001, subject to the provisions of § 413.86(d)(4) relating to calculating a proportional reduction in Medicare+Choice direct GME payments, the additional payment amount specified in paragraph (c) of this section is calculated according to the following steps:

* * * * *

(3) *Step three.* Multiply the ratio calculated in step two by the Medicare+Choice nursing and allied health payment ''pool'' determined in accordance with paragraph (f) of this section for the current calendar year. The resulting product is each respective hospital's additional payment amount.

* * * * *

(e) *Calculating the additional payment amount for portions of cost reporting periods occurring on or after January 1, 2001.* For portions of cost reporting periods occurring on or after January 1, 2001, subject to the provisions of § 413.86(d)(4) relating to calculating a proportional reduction in Medicare+Choice direct GME payments, the additional payment amount specified in paragraph (c) of this section is calculated according to the following steps:

(1) *Step one.* Each calendar year, determine for each eligible hospital the total—

(i) Medicare payments received for approved nursing or allied health education programs based on data from the settled cost reports for the period(s) ending in the fiscal year that is 2 years prior to the current calendar year; and

(ii) Inpatient days for that same cost reporting period.

(iii) Medicare+Choice inpatient days for that same cost reporting period.

(2) *Step two.* Using the data from step one, determine the ratio of the individual hospital's total nursing or allied health payments, to its total inpatient days. Multiply this ratio by the hospital's total Medicare+Choice inpatient days.

(3) *Step three.* HCFA will determine, using the best available data, for all eligible hospitals the total of all—

(i) Nursing and allied health education program payments made to all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year;

(ii) Inpatient days from those same cost reporting periods; and

(iii) Medicare+Choice inpatient days for those same cost reporting periods.

(4) *Step four.* Using the data from step three, HCFA will determine the ratio of the total of all nursing and allied health education program payments made to all hospitals for all cost reporting periods ending in the fiscal year that is 2 years prior to the current calendar year, to the total of all inpatient days from those same cost reporting periods. HCFA will multiply this ratio by the total of all Medicare+Choice inpatient days for those same cost reporting periods.

(5) *Step 5.* Calculate the ratio of the product determined in step two to the product determined in step four.

(6) *Step 6.* Multiply the ratio calculated in step five by the amount determined in accordance with paragraph (f) of this section for the current calendar year. The resulting product is each respective hospital's additional payment amount.

* * * * *

(f) *Calculation of the payment ''pool.''*

(1) Subject to paragraph (f)(3) of this section, each calendar year, HCFA will calculate a Medicare+Choice nursing and allied health payment ''pool'' according to the following steps:

(i) * * *

(ii) Multiply the ratio calculated in paragraph (f)(1)(i) of this section by projected total Medicare nursing and allied health education reasonable cost payments made to all hospitals in the current calendar year.

(2) The resulting product of the steps under paragraphs (f)(1)(i) and (f)(1)(ii) of this section is the Medicare+Choice nursing and allied health payment ''pool'' for the current calendar year.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.612 is revised to read as follows:

§ 485.612 Condition of participation: Compliance with hospital requirements at the time of application.

Except for recently closed facilities as described in § 485.610(a)(2), or health clinics or health centers as described in § 485.610(a)(3), the facility is a hospital that has a provider agreement to participate in the Medicare program as a hospital at the time the hospital applies for designation as a CAH.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 28, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: April 18, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–14732 Filed 6–12–01; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
June 13, 2001

Part VIII

Department of Housing and Urban Development

24 CFR Part 982

Section 8 Homeownership Program; Downpayment Assistance Grants and Streamlining Amendments; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4670–P–01]

RIN 2577–AC28

Section 8 Homeownership Program; Downpayment Assistance Grants and Streamlining Amendments

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 301 of the American Homeownership and Economic Opportunity Act of 2000. Section 301 amends the statute authorizing the ''homeownership option'' under the Housing Choice Voucher Program. Under section 301, a Public Housing Agency (PHA) may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2002. In addition to implementation of section 301, this proposed rule also would clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 2000 (65 FR 55134), HUD published its final rule implementing the ''homeownership option'' under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998 (title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105–276, 112 Stat. 2461, 2518, approved October 21, 1998). Under the section 8(y) homeownership option, a public housing agency (PHA) may choose to provide monthly tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. The September 12, 2000 final rule implemented the section 8(y) homeownership option by adding a new ''special housing type'' under subpart M of HUD's regulations for the Housing Choice Voucher Program at 24 CFR part 982. Subpart M describes program requirements for alternatives to the basic Housing Choice Voucher program. The regulations for the homeownership option are located in §§ 982.625–982.641 of subpart M.

Section 301 of the American Homeownership and Economic Assistance Act of 2000 (Public Law 106–569, 114 Stat. 2944, 2952, approved December 27, 2000) amends section 8(y) to authorize an alternative form of assistance under the homeownership option—assistance in the form of a single downpayment assistance grant. Under section 301, a PHA may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home.

Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2002.

This proposed rule would amend HUD's regulations for the homeownership option to implement the downpayment assistance authority provided by section 301. In addition to the implementation of section 301, HUD proposes, through this proposed rule, to clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option.

II. Implementation of Downpayment Assistance Grants

A. General

This proposed rule would implement section 301 by establishing a new § 982.643, which describes the requirements applicable to downpayment assistance grants. Conforming changes would also be made to § 982.4 (which establishes the definitions applicable to the Housing Choice Voucher Program) and § 982.625 (which contains general requirements applicable to the homeownership option).

B. Two Types of Homeownership Assistance

The proposed rule provides that a PHA may provide one of two types of homeownership assistance for a family:

1. Monthly homeownership assistance payments; or
2. A single downpayment assistance grant.

If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. The PHA may choose to offer either or both forms of homeownership assistance under its program, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with § 982.601(b)(3). Either form of homeownership assistance may be paid either to a family, or to a mortgage lender on behalf of the family.

C. Eligibility for Downpayment Assistance

To receive a downpayment assistance grant, the proposed rule provides that a family must meet all of the eligibility requirements for participation in the homeownership option. In addition, the proposed rule provides that a family must already have been receiving tenant-based voucher rental assistance for a period of at least one-year to receive a downpayment grant. The House Committee Report on the American Homeownership and Economic Opportunity Act provides that the homeownership-related amendments to the Housing Choice Voucher Program are intended ''to assist those *currently receiving rental assistance* to move toward homeownership'' (*see* H.R. Rep. No. 553, 106th Cong., 2d. Sess. pt. 1, at 60 (2000)) (emphasis added). Restricting eligibility to families already receiving voucher assistance will help to ensure that downpayment grants are used to

further the Conferees' objective of helping relatively higher income families with vouchers move ''up and out'' and become homeowners, freeing up vouchers for other needy renter families. Restricting eligibility to current program participants will also help to minimize duplication with other downpayment programs that are designed to help ''new'' families not currently receiving rental assistance and help to ensure that the program does not unduly reduce the availability of rental assistance.

HUD specifically invites public comment on whether eligibility for downpayment assistance grants should be limited in another way or expanded and, if so, how. All public comments will be considered in the development of the final rule.

D. Applicability of Other Homeownership Option Requirements

Proposed § 982.625(e)(4) and (e)(6) would specify those regulatory requirements applicable to the basic homeownership option that would apply to downpayment assistance grants. A downpayment grant is a one-time assistance payment. Accordingly, those regulatory provisions that establish ongoing homeownership assistance requirements or procedures would not apply to downpayment assistance grants (in general, §§ 982.633 through 982.641). With the exception of those requirements specifically noted in proposed § 982.625(e)(4) and (e)(6), all requirements applicable to the Housing Choice Voucher program apply to downpayment assistance grants.

E. Maximum Downpayment Grant

Section 301 provides that the maximum downpayment grant ''may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family, based on the income of the family at the time the grant is to be made.'' Under § 982.635(a), the monthly homeownership assistance payment paid by the PHA on behalf of the family is equal to the lower of (1) the payment standard minus the total tenant payment, or (2) the family's monthly homeownership expenses minus the total tenant payment. The proposed rule provides that the maximum amount of the downpayment grant will be calculated using only the first prong of the test described in § 982.635(a). Specifically, proposed § 982.643(b) provides that a downpayment assistance grant may not exceed twelve times the payment standard minus the total tenant payment (as calculated in accordance with § 5.628). Homeownership expenses will not be considered in making this determination.

The statutory language of section 301 does not require that homeownership expenses be considered in determining the maximum grant amount. As noted earlier in this preamble, section 301 provides that the maximum downpayment grant must be calculated based on the family's income ''at the time the grant is to be made.'' However, many homeownership expenses (such as principal and interest on initial mortgage debt, the amount of real estate taxes, and the costs of major repairs and replacements) cannot be estimated until after the family has contracted to purchase the home. Since the family is approved for downpayment assistance before it enters into the contract of sale, actual homeownership expenses is unknown and, therefore, cannot be calculated ''at the time the grant is to be made.''

Requiring the inclusion of homeownership expenses in the calculation of the maximum grant amount might also adversely affect the family's ability to obtain suitable financing, and unduly complicate program administration. The actual amount of homeownership expenses is not known at the time the family applies for financing. Lenders will be reluctant to provide a mortgage loan without knowing the actual amount that the family will have available for the downpayment. Further, HUD expects that, in the majority of cases, homeownership expenses will exceed the payment standard. Accordingly, it is likely that the maximum grant amount for a family will ultimately be based on the payment standard, regardless of whether homeownership expenses are also factored into the calculation.

In the case of a family that purchases a home outside of the initial PHA's jurisdiction, the maximum downpayment grant shall be calculated using the receiving PHA payment standard and policies.

F. Payment and Use of Downpayment Grant

The proposed rule provides that the downpayment assistance grant must be paid at the closing of the family's purchase of the home. The downpayment assistance grant must be applied toward the purchase price of the home. No amount of the downpayment grant may be used for payment of other fees and charges related to the acquisition of the home (such as closing costs).

G. Administrative Fee

For each downpayment assistance grant made by the PHA, HUD would pay the PHA a one-time administrative fee in accordance with § 982.152. Specifically, the administrative fee for downpayment assistance would be treated as an ''extraordinary cost'' under § 982.152(a)(1)(iii)(C). The administrative fee would be established through HUD field notice, in accordance with the existing procedures for the establishment of such fees. HUD proposes that the administrative fee for downpayment assistance initially be set at $250.

H. Renewal of Vouchers

When issuing a voucher used for a downpayment assistance grant to a family, the PHA should consider the amount of available reserves. In calculating the per-unit costs for purposes of voucher renewal funding, downpayment assistance shall not be counted.

III. Streamlining and Clarifying Amendments to Homeownership Option

A. Minimum Income Requirement

Section 8(y) of the United States Housing Act of 1937, provides that a family may not receive homeownership assistance unless the family demonstrates that gross monthly income is at least two times the voucher ''payment standard'' or an ''other amount'' established by the Secretary (section 8(y)(1)(B), 42 U.S.C. 1437(y)(1)(B)). HUD has implemented the statutory minimum income requirements at § 982.627(c)(1). Specifically, the regulation currently provides for a uniform national minimum income requirement that is equal to 2,000 hours of annual full-time work at the Federal minimum wage.

Some PHAs have expressed a concern that the current minimum income is too low for their area and that few, if any, families with incomes that low would qualify for a mortgage. These PHAs argue that this unrealistically raises the expectations of many families and results in an unnecessary administrative burden for PHAs who must process a large number of applications that have no realistic chance of leading to homeownership. On the other hand, HUD wants to make sure that PHA-specific income limits do not prevent use of the homeownership option by families who can qualify for a mortgage from a reputable lending institution.

To balance these respective concerns, this proposed rule would provide PHAs with the flexibility to establish a

minimum income requirement that is higher than the standard described in § 982.627(c)(1), based on factors such as housing costs and the practices of participating lenders. However, a family that does not meet the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if the family: (1) Meets the HUD-established standard; and (2) has been pre-qualified or pre-approved for financing. The pre-qualified or pre-approved financing must meet any PHA established requirements for financing the purchase of the home (including qualifications of lenders and terms of financing). Further, the pre-qualified or pre-approved financing amount must be sufficient to purchase decent, safe, and sanitary housing of a modest nature in the PHA's jurisdiction.

B. Eligibility of Units Not Yet Under Construction

The homeownership option regulations at § 982.628(a)(2) provide that a home is eligible for purchase under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership assistance, the home is either existing or under construction. Under the existing regulations, homeownership assistance may not be provided for the purchase of a unit that is not yet under construction. However, HUD has become aware of concerns that this restriction may limit the participation in the homeownership option of families that also participate in certain other Federal homeownership programs. (For instance, the Rural Housing Service Mutual Self-Help Housing Loan program requires the family to assist in the construction of the unit. Typically, under these ''sweat equity'' homeownership programs, the family must commit to purchase the unit before construction of the home begins.) To address these concerns, and increase participation in the homeownership option, HUD is considering the feasibility of expanding the list of eligible units at the final rule stage to include certain new homes not yet under construction. However, there are several issues that will need to be considered before implementation of such a change—including whether HUD may provide homeownership assistance for the purchase of these units in a manner that is consistent with the statutory environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321) and related Federal authorities, and does not impose an undue administrative burden. HUD anticipates that these issues will be resolved by the final rule stage and that the final rule will reflect whether expansion of eligibility is feasible or not.

C. Eligibility of Manufactured Homes

As noted, § 982.628 describes the units eligible for purchase under the homeownership option. Although manufactured housing is not specifically mentioned in § 982.628, the preamble to HUD's September 12, 2000 final rule made clear that a manufactured home and the real property upon which the manufactured home sits are eligible for purchase under the homeownership option (see 65 FR 55134 at 55147, first column). For purposes of clarity, this proposed rule would amend § 982.628 to explicitly reference the eligibility of manufactured homes. The proposed rule would also authorize the provision of homeownership assistance for the purchase of a manufactured home where the family will not own fee title to the real property on which the home is located in certain circumstances. However, the manufactured home must have a permanent foundation. Further, the family must have the right to occupy the manufactured home site for a period of at least thirty years.

D. Removal of Recapture Provisions

The homeownership option regulations at § 982.640 provide for the recapture of a percentage of the homeownership assistance provided to the family upon the sale of refinancing of the home. The recapture provisions were included in the regulation to protect program integrity by preventing windfalls to individual families and program abuses. PHAs, lenders, and other potential program participants, however, have expressed concerns that the recapture provisions are not an important safeguard given the structure and likely use of this subsidy program, will unduly complicate administration of the homeownership option, and will discourage participation in the homeownership option by PHAs, lenders and families. Accordingly, HUD has determined that removal of the recapture provisions is appropriate.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made 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). The Finding of No Significant Impact 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 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would implement an alternative to the basic homeownership option under which a PHA may elect to provide a one-time downpayment assistance grant to eligible families. The proposed rule would also make several clarifying and streamlining amendments to the regulations governing basic homeownership voucher assistance, which is also administered by PHAs. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the

RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The proposed rule would not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule is exclusively concerned with homeownership voucher assistance. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. In § 982.4(b), add the definition of ''*Downpayment assistance grant*'' in alphabetical order, and revise the definition of ''*Homeownership assistance*'' to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home.

* * * * *

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

* * * * *

3. Add § 982.625(e) to read as follows:

§ 982.625 Homeownership option: General.

* * * * *

(e) *Two types of homeownership assistance.* (1) A PHA may provide one of two types of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or

(ii) A single downpayment assistance grant.

(2) The PHA may choose to offer either or both forms of homeownership assistance under its program, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with § 982.601(b)(3)).

(3) Paragraphs (e)(4), (e)(5), and (e)(6) of this section specify what regulatory provisions (under the heading ''homeownership option'') are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(4) *Common provisions that apply to both forms of homeownership assistance:*

(i) Section 982.625 (General);

(ii) Section 982.626 (Initial requirements);

(iii) Section 982.627 (Eligibility requirements for families);

(iv) Section 982.628 (Eligible units);

(v) Section 982.629 (Additional PHA requirements for family search and purchase);

(vi) Section 982.630 (Homeownership counseling);

(vii) Section 982.631 (Home inspections and contract of sale);

(viii) Section 982.632 (Financing purchase of home; affordability of purchase);

(ix) Section 982.636 (Portability) (However, paragraphs (a) and (e) of § 982.636 do not apply to downpayment assistance grants); and

(x) Section 982.641 (Applicability of other requirements).

(5) *Provisions that apply to homeownership assistance in the form of monthly housing assistance payments:*

(i) Section 982.633 (Continued assistance requirements; family obligations);

(ii) Section 982.634 (Maximum term of homeownership assistance);

(iii) Section 982.635 (Amount and distribution of monthly homeownership assistance payment);

(iv) Section 982.637 (Move with continued tenant-based assistance);

(v) Section 982.638 (Denial or termination of assistance for family); and

(vi) Section 982.639 (Administrative fees).

(6) *Provision that applies to homeownership assistance in the form of a downpayment assistance grant:* Section 982.643 (Downpayment assistance grants).

4. Revise § 982.627(c)(3) to read as follows:

§ 982.627 Homeownership option: Eligibility requirements for families.

* * * * *

(c) * * *

(3) A PHA may establish a minimum income requirement that is higher than the Federal minimum wage multiplied by 2,000 hours, based on factors such as housing costs and the practices of participating lenders. However, a family that does not meet the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family meets the minimum income requirement as described in paragraphs (c)(1) and (c)(2) of this section;

(ii) The family demonstrates that it has been pre-qualified or pre-approved for financing;

(iii) The pre-qualified or pre-approved financing meets any PHA established requirements under § 982.632 for financing the purchase of the home

(including qualifications of lenders and terms of financing); and

(iv) The pre-qualified or pre-approved financing amount is sufficient to purchase decent, safe, and sanitary housing of a modest nature in the PHA's jurisdiction.

* * * * *

5. Amend § 982.628 as follows:

a. Revise paragraph (a)(3);

b. Redesignate paragraph (b) as paragraph (c); and

c. Add new paragraph (b) to read as follows.

§ 982.628 Homeownership option: Eligible units.

(a) * * *

(3) The unit is either a one unit property (including a manufactured home) or a single dwelling unit in a cooperative or condominium.

* * * * *

(b) *Purchase of manufactured home where family will not own real property.* Homeownership assistance may be provided for the purchase of a manufactured home where the family will not own fee title to the real property on which the home is located, but only if:

(1) The manufactured home is located on a permanent foundation; and

(2) The family has the right to occupy the manufactured home site for at least thirty years.

* * * * *

6. In § 982.635(e), revise the first sentence to read as follows:

§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

* * * * *

(e) *Automatic termination of homeownership assistance.* Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. * * *

7. Remove § 982.640.

8. Add § 982.643 to read as follows:

§ 982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide homeownership assistance for the family in the form of a single grant to be applied toward the downpayment required in connection with the purchase of the home.

(2) The family must have already been receiving Section 8 tenant-based rental assistance for a period of at least one year to receive a downpayment assistance grant under this section.

(3) A member of a family that has received a downpayment assistance grant may not receive monthly homeownership assistance payments from any PHA. A member of a family that has received homeownership assistance payments may not receive a downpayment assistance grant from any PHA.

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the payment standard minus the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-time administrative fee in accordance with § 982.152(a)(1)(iii).

Dated: May 23, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–14882 Filed 6–12–01; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Wednesday,
June 13, 2001

Part IX

The President

Proclamation 7450—Great Outdoors Week, 2001

Federal Register
Vol. 66, No. 114
Wednesday, June 13, 2001

Presidential Documents

Title 3—

The President

Proclamation 7450 of June 11, 2001

Great Outdoors Week, 2001

By the President of the United States of America

A Proclamation

During Great Outdoors Week, our Nation celebrates the beauty and majesty of the great outdoors. This occasion allows Americans to reflect on the role our parks, forests, wildlife refuges, recreation areas, and other public lands and waters play in our lives. We also acknowledge how this wonderful shared legacy would not be possible without our strong tradition of natural resource conservation.

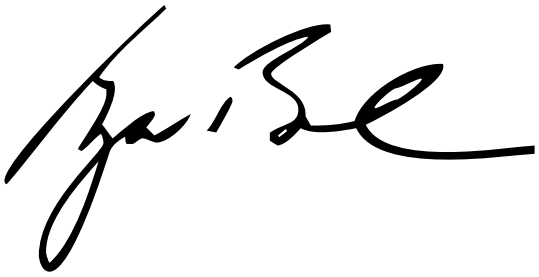
No other country boasts more extraordinary or more diverse options for recreation. Our Nation's federally managed lands account for nearly one in every three acres and, together with our Nation's waters, provide visitors with almost 2 billion opportunities for recreation annually. Eight of ten Americans participate at least monthly in outdoor recreation, and we may choose to challenge ourselves through demanding activities like mountain climbing or river rafting. Enjoying the outdoors also can be as tranquil as birdwatching or viewing a golden sunset from a campsite. These experiences leave us with wonderful memories of time shared with family and friends, provide opportunities for improving our health, and expose us to the wonders of nature.

Recognizing that most Americans enjoy the outdoors by visiting Federal, State, or local sites, my budget proposes to fully fund the Land and Water Conservation Fund at $900 million for Fiscal Year 2002. Half of the Fund will go toward grants to support State and local conservation and outdoor recreation efforts. My National Parks Legacy Project pledges to secure $4.9 billion to help ensure that our national parks are properly maintained and enhanced. In addition, I have directed the Department of the Interior to prepare an annual report describing the condition of our parks and offering specific recommendations to improve them.

During Great Outdoors Week, we also honor Americans who volunteer their time to restore and safeguard these national treasures. These generous individuals collectively contribute millions of hours to clean shorelines and waterways, maintain trails and campsites, staff interpretive centers, and perform other important tasks. Their efforts help ensure the continued vitality of our precious natural areas and enhance the quality of life for all Americans.

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 June 10–16, 2001, as Great Outdoors Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to participate in safe and wholesome outdoor recreation.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, 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.



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Filed 6–12–01; 10:54 am]
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Federal Register

Vol. 66, No. 114

Wednesday, June 13, 2001

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FEDERAL REGISTER PAGES AND DATE, JUNE

29661–29894 1
29895–30056 4
30057–30286 5
30287–30628 6
30629–30800 7
30801–31106 8
31107–31374 11
31375–31834 12
31835–32206 13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
11 30340

3 CFR

Proclamations:
7208 (See Proc. 7445) 30053
7214 (See Proc. 7445) 30053
7445 30053
7446 30287
7447 31367
7448 31371
7449 31375
7450 32205

Executive Order:
13035 (Amended by EO 13215) 30285
13092 (see EO 13215) 30285
13113 (see EO 13215) 30285
13125 (Amended by EO 13216) 31373
13200 (see EO 13215) 30285
13215 30285
13216 31373

Administrative Orders:
Presidential Determinations:
No. 2001–16 of June 1, 2001 30631
No. 2001–17 of June 1, 2001 30633
Memorandums:
Memorandum of May 30, 2001 30629
Memorandum of May 31, 2001 31833
Memorandum of June 5, 2001 30799

5 CFR

330 29895
332 29895
351 29895
353 29895
1201 30635

7 CFR

2 31107
272 29661
273 29661
932 30289
985 30291
993 30642
1482 30801

Proposed Rules:
319 29735
981 31850
1030 31185
1944 29739

8 CFR

100 29661
103 ..... 29661, 29682, 32138
214 31107
236 29661
245a 29661
274a 29661
248 31107
299 ..... 29661, 29682, 31107
310 32138
320 32138
322 32138
334 32138
337 32138
338 32138
341 32138

9 CFR

94 ..... 29686, 29897, 29899

Proposed Rules:
93 29921

10 CFR

Proposed Rules:
2 29741

12 CFR

8 29890
32 31114

Proposed Rules:
Ch. V 31186

13 CFR

107 30646
115 30803
121 30646

14 CFR

23 30649
39 ..... 29689, 29900, 30296, 30300, 30302, 30305, 30307, 31121, 31124, 31129, 31131, 31135, 31141, 31143, 31525, 31527, 31835, 31836, 31837
61 31145
63 31145
65 31145
71 29691
91 30310
95 30057
97 ..... 29691, 29693
108 31145
121 ..... 29888, 30310, 31145, 31146
125 30310
135 ..... 30310, 31145, 31146

Proposed Rules:
39 ..... 30093, 30095, 30099, 30101, 30103, 30105, 30107,

30109, 30112, 30114, 30341, 30343, 30345, 31189, 31192, 31194, 31566, 31569
71 .....30117, 30118, 30119, 30120, 30654, 31196

15 CFR

902.....30651
Proposed Rules:
922.....30828

16 CFR

Proposed Rules:
1115.....30655

17 CFR

200.....31839
270.....30311
275.....30311
450.....29888

21 CFR

5.....30992
101.....30311
173.....31840
606.....31165, 31146
607.....31146
610.....31146
630.....31165
640.....31146
660.....31146
809.....31146

22 CFR

51.....29904

24 CFR

982.....30566
Proposed Rules:
206.....30262
982.....32198

25 CFR

151.....31976

26 CFR

Proposed Rules:
1.....31197, 31850
5c.....31850
5f.....31850
18.....31850
301.....31850

27 CFR

9.....29695

28 CFR

Proposed Rules:
16.....29921

30 CFR

926.....31530
Proposed Rules:
206.....30121
210.....30121
216.....30121
218.....30121
920.....31571
926.....29741, 29744,
934.....30347

31 CFR

Proposed Rules:
210.....29746

32 CFR

989.....31177, 31976

33 CFR

100 .....30313, 30314, 30316, 30805
117.....30806
165 .....29699, 29907, 30059, 30061, 30317, 30319, 31841
207.....30063, 31277
Proposed Rules:
100.....31868
165.....31870, 31872

36 CFR

242.....31533
Proposed Rules:
1202.....30134

37 CFR

252.....29700
257.....29700
Proposed Rules:
1.....30828
2.....30828

38 CFR

Proposed Rules:
46.....30141

39 CFR

20.....29704
111.....30064
551.....31822

40 CFR

9 .....30806, 30807, 31086
52 .....29705, 30815, 31086, 31544, 31545, 31548, 31550, 31552, 31554
60.....31177
63.....30818
75.....31842
141.....31086
142.....31086
180 .....29705, 30065, 30073, 30321, 30325, 30334, 30822
197.....32074
271.....29712
435.....30807
Proposed Rules:
52 .....30145, 30656, 30829, 31197, 31199, 31573, 31574, 31575
70.....31575
72.....31978
75.....31978
78.....31978
81.....31873
97.....31978
261.....30349
63.....30830
86.....30830
271.....29746
300.....31580, 31582

42 CFR

410.....32172
412.....32172
413.....32172
431.....31178
433.....31178
435.....31178
436.....31178
457.....31178
485.....32172

44 CFR

64.....31178
65.....31181, 31183

46 CFR

1.....31842
110.....29908
111.....29908

47 CFR

1.....29722
2.....29722
15.....31556
24.....29911
25.....31557
36.....30080
54.....30080, 30334
64.....30334
73 .....29723, 29724, 29725, 29726, 30090, 30091, 30092, 30335, 30826, 31560, 31561
87.....29722
90.....30335
101.....29722
Proposed Rules:
15.....31585
17.....30853, 30860
20.....31878
22.....31589
24.....31589
25.....30361
73 .....29747, 30365, 30366, 31596, 31597
95.....31598
622.....30866
660.....30867, 30869

48 CFR

1803.....29726
1811.....29727
1830.....29727
1832.....29728
1852.....29726
Proposed Rules:
801.....30659
806.....30659
812.....30659
837.....30659
852.....30659
873.....30659

49 CFR

393.....30335
Proposed Rules:
571 .....29747, 30366, 31883

50 CFR

100.....31533
600.....29922
622.....29924
635.....30651, 31844
648.....29729, 31184
660.....29729, 31561
679.....31845, 31849
Proposed Rules:
17 .....30148, 30368, 30372, 31760, 32052
223.....31600, 31603
622.....31608, 31609
648.....30149
679.....30396

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 13, 2001

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Acidified soldium chlorite solutions; published 6-13-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Hospital inpatient payments and graduate medical education rates and costs; Benefits Improvement and Protection Act of 2000 provisions; published 6-13-01

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Citizenship:

Children born outside of the United States; certification; published 6-13-01

SECURITIES AND EXCHANGE COMMISSION

Organization, functions, and authority delegations:

Director, Division of Market Regulation; published 6-13-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tobacco inspection:

Permissive inspection and certification; fees and charges; comments due by 6-22-01; published 5-23-01

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Cattle from Australia and New Zealand; testing exemption; comments due by 6-19-01; published 4-20-01

Hearing; comments due by 6-19-01; published 6-4-01

Cattle, imported; tuberculosis testing requirements; comments due by 6-19-01; published 4-20-01

Horses from Iceland; exemption from dourine, glanders, equine piroplasmosis, and equine infectious anemia testing during quarantine period; comments due by 6-18-01; published 4-18-01

Plant-related quarantine, domestic:

Karnal bunt; comments due by 6-19-01; published 4-20-01

Plant-related quarantine, foreign:

Artificially dwarfed plants; importation; comments due by 6-19-01; published 4-20-01

Unshu oranges from Japan; comments due by 6-18-01; published 4-18-01

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric and telecommunications loans:

Audits; management letter requirements; comments due by 6-20-01; published 5-21-01

Generally Accepted Government Auditing Standards; amendments; comments due by 6-20-01; published 5-21-01

COMMERCE DEPARTMENT

International Trade Administration

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 6-22-01; published 5-23-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic zone—

Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; Steller sea lion protection measures; comments due by 6-22-01; published 5-15-01

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 6-19-01; published 6-4-01

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 6-19-01; published 5-30-01

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Modernization Act; implementation:

Securities brokers or dealers; registration as futures commission merchant or introducing broker; comments due by 6-18-01; published 5-17-01

Securities:

Market capitalization and dollar value of average daily trading volume, method of determining; narrow-based security index definition application; comments due by 6-18-01; published 5-17-01

ENERGY DEPARTMENT

Research misconduct; Federal policy; agency implementation; meetings; comments due by 6-20-01; published 4-18-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

West Virginia; comments due by 6-22-01; published 5-23-01

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 6-20-01; published 5-21-01

Delaware; comments due by 6-18-01; published 5-17-01

Kentucky and Indiana; comments due by 6-18-01; published 5-17-01

Maryland; comments due by 6-21-01; published 5-22-01

Pennsylvania; comments due by 6-20-01; published 5-21-01

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

California; comments due by 6-18-01; published 5-18-01

Hazardous waste management system:

Hazardous waste manifest system modification; comments due by 6-21-01; published 5-22-01

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

National priorities list update; comments due by 6-21-01; published 5-22-01

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Tariffs—

Competitive local exchange carriers; access charge reform; comments due by 6-20-01; published 5-21-01

Radio stations; table of assignments:

Florida; comments due by 6-18-01; published 5-15-01

Various states; comments due by 6-18-01; published 5-15-01

FEDERAL MARITIME COMMISSION

Practice and procedure:

Alternative dispute resolution; comments due by 6-20-01; published 5-21-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs and biological products:

Prescription drug products; labeling requirements; comments due by 6-22-01; published 3-30-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low income housing:

Housing assistance payments (Section 8)—

Temporary Assistance for Needy Families Program; annual income requirements; comments due by 6-19-01; published 4-20-01

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Findings on petitions, etc.—

Yellow-billed cuckoo; comments due by 6-20-01; published 6-5-01

INTERIOR DEPARTMENT

Watches, watch movements, and jewelry:

Duty-exemption allocations—

Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 6-22-01; published 5-23-01

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:

Transfers and licenses covering extended renewal term; notices of termination; comments due by 6-18-01; published 5-3-01

SECURITIES AND EXCHANGE COMMISSION

Securities:

Market capitalization and dollar value of average daily trading volume, method of determining; narrow-based security index definition application; comments due by 6-18-01; published 5-17-01

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

San Diego Bay, CA; security zone; comments due by 6-21-01; published 4-23-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 6-18-01; published 4-18-01

Boeing; comments due by 6-19-01; published 4-20-01

Bombardier; comments due by 6-22-01; published 5-23-01

Raytheon; comments due by 6-18-01; published 5-4-01

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Uniform Traffic Control Devices Manual—

Accessible pedestrian signals; supporting information and guidance; comments due by 6-18-01; published 5-17-01

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Civil monetary penalties; inflation adjustment; comments due by 6-18-01; published 5-18-01

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Wine; labeling and advertising—

Counoise and St. Laurent; new grape variety names; comments due by 6-18-01; published 4-17-01

TREASURY DEPARTMENT

Customs Service

Articles conditionally free, subject to reduced rates, etc.:

Wool products; limited refund of duties; comments due by 6-22-01; published 4-23-01

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Benefits entitlement, written and oral information or statements affecting; comments due by 6-19-01; published 4-20-01

LIST OF PUBLIC LAWS

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H.R. 1836/P.L. 107–16

Economic Growth and Tax Relief Reconciliation Act of 2001 (June 7, 2001; 115 Stat. 38)

Last List June 8, 2001

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