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Contents

Federal Register

Vol. 66, No. 134

Thursday, July 12, 2001

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 36581

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service

Air Force Department
PROPOSED RULES
Administration:
Installation entry policy, and civil disturbance intervention and disaster assistance, 36523–36525

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36549–36550

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Signature Flight Support Corp. et al., 36594–36603
National cooperative research notifications:
Petroleum Environmental Research Forum, 36603

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 36550–36551

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Botswana; mother to child transmission of HIV; support to improve prevention, 36581–36582

Children and Families Administration
See Community Services Office

Coast Guard
RULES
Drawbridge operations:
Florida, 36466–36467
Great Lakes pilotage regulations:
Rates update, 36484–36490
PROPOSED RULES
Drawbridge operations:
Louisiana, 36525–36527
New Jersey, 36527–36528
Oregon, 36529–36530
Pollution:
Marine casualties; reporting requirements, 36530–36532

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

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Caribbean Basin Trade Partnership Act; short supply requests—
Microfilament fabric of continuous polyester and nylon filaments; denied, 36561–36562

Community Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Violence Prevention and Services Program; correction, 36583
Training, Technical Assistance, and Capacity-Building Program; correction, 36583

Customs Service
NOTICES
Commercial gauger:
Approval—
SGS Control Services, Inc., 36617
Trade name recordation applications:
Red Bull North America, Inc.; correction, 36617

Defense Department
See Air Force Department

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Scrap metals disposition; public scoping meetings, 36562–36566

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Large municipal waste combustors; emission guidelines, etc., 36473–36476
Air quality planning purposes; designation of areas:
Alaska, 36476–36477
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aminoethoxyvinylglycine, 36477–36484
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Large municipal waste combustors; emission guidelines, etc., 36547–36548
Air quality implementation plans; approval and promulgation; various States:
Texas, 36532–36547, 36655–36673

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
RULES
Export administration regulations:
Agricultural commodities, medicines, and medical devices; exports to designated terrorist countries, 36675–36683

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 36445–36456
McDonnell Douglas, 36441–36443, 36456–36457
PROPOSED RULES
Airworthiness directives:
Boeing, 36509–36523

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 36577

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Duke Energy Vermillion, LLC, et al., 36567–36571
Florida Power Corp. et al., 36571–36573
Environmental statements; availability, etc.:
Maritimes & Northeast Pipeline, L.L.C., et al., 36573–36574
Hydroelectric applications, 36574–36576
Preliminary permits surrender:
Universal Electric Power Co., 36576–36577
Applications, hearings, determinations, etc.:
Amer Ref-Fuel Co. of Niagara, L.P., et al., 36566
Detroit Edison Co., 36566
ISO New England Inc., 36567
New York Independent System Operator, Inc., 36567

Federal Financial Institutions Examination Council
NOTICES
Community Reinvestment Act:
Community reinvestment; interagency questions and answers, 36619–36653

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36577
Ocean transportation intermediary licenses:
R&R Shipping, Inc., et al., 36577–36578

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 36578–36579
Permissible nonbanking activities, 36579

Federal Retirement Thrift Investment Board
PROPOSED RULES
Thrift Savings Plan:
Funds withdrawal methods; financial hardship withdrawal, 36494–36495

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36579–36581

Federal Transit Administration
NOTICES
Environmental statements; notice of intent:
St. Paul and Bloomington, MN; Riverview Corridor Transit Project, 36615–36617

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
Electronic benefit transfer systems; approval and operation standards, 36495–36502

Foreign Assets Control Office
RULES
Sanctions regulations, etc.:
Cuba, Sudan, Libya, and Iran; exports of agricultural products, medicines, and medical devices; and Cuba travel-related transactions, 36682–36694

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Community Services Office
See Inspector General Office, Health and Human Services Department

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36585–36587

Indian Affairs Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36587–36588
Tribal-State Compacts approval; Class III (casino) gambling:
Rosebud Sioux Tribe, SD, 36589

Inspector General Office, Health and Human Services Department
NOTICES
Reports and guidance documents; availability, etc.:
Business consultants' practices; special advisory bulletin, 36583–36585

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
Various countries, 36551–36555
Stainless steel butt-weld pipe fittings from—
Taiwan, 36555–36560
Export trade certificates of review, 36560–36561

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Gulf Coast Recycling, Inc., 36592–36593
Macalloy Corp., 36593
Privacy Act:
Systems of records, 36593–36594

Land Management Bureau
NOTICES
Public land orders:
Nevada, 36589–36592

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Eastern Gulf of Mexico OCS—
Oil and gas lease sales, 36592

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Unclassified information technology resources; security requirements, 36490–36492

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific Ocean perch, 36492–36493

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
Skin dose limit; revision, 36502–36509
NOTICES
Memorandums of understanding:
Engineers Corps; Formerly Utilized Sites Remedial Action Program Sites; cleanup and decommissioning; coordination with NRC-licensed facilities, 36606–36609
Applications, hearings, determinations, etc.:
JL Shepherd & Associates, 36603–36605
Kerr-McGee Corp., 36605–36606
Southern California Edison Co., 36606

Office of United States Trade Representative
See Trade Representative, Office of United States

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36609–36610

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 36617

Securities and Exchange Commission
RULES
Financial reporting matters:
Loan and lease losses; allowance determination methodology; development, documentation, and application; staff accounting bulletin, 36457–36465

Social Security Administration
NOTICES
Meetings:
President's Commission to Strengthen Social Security, 36610
Privacy Act:
Computer matching programs, 36610–36611

Special Counsel Office
NOTICES
Privacy Act:
Systems of records, 36611–36614

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
Reports and guidance documents; availability, etc.:
Free Trade Area of the Americas Agreement and FTAA Technical Committee on Institutional Issues; consolidated texts; comment request, 36614–36615

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Transit Administration
See Saint Lawrence Seaway Development Corporation

Treasury Department
See Customs Service
See Foreign Assets Control Office

Veterans Affairs Department
RULES
Medical benefits:
Emergency treatment furnished at non-VA facilities to veterans for nonservice-connected conditions; payment or reimbursement, 36467–36472

Separate Parts In This Issue

Part II
Federal Financial Institutions Examination Council, 36619–36653

Part III
Environmental Protection Agency, 36655–36673

Part IV
Department of Commerce, Bureau of Export Administration; Department of Treasury, Office of Foreign Assets Control, 36675–36694

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.

5 CFR

Proposed Rules:

1650 36494

7 CFR

Proposed Rules:

274 36495

10 CFR

Proposed Rules:

20 36502

14 CFR

39 (10 documents) 36441, 36443, 36445, 36447, 36449, 36450, 36452, 36453, 36455, 36456

Proposed Rules:

39 (4 documents) 36509, 36513, 36516, 36520

15 CFR

740 36676
742 36676
746 36676
772 36676
774 36676

17 CFR

211 36457

31 CFR

515 36683
538 36683
550 36683
560 36683

32 CFR

Proposed Rules:

808 36523

33 CFR

117 36466

Proposed Rules:

117 (3 documents) 36525, 36527, 36529
151 36530
153 36530

38 CFR

17 36467

40 CFR

60 36473
81 36476
180 (2 documents) 36477, 36481

Proposed Rules:

52 (3 documents) 36532, 36542, 36656
60 36547

46 CFR

401 36484

Proposed Rules:

4 36530

48 CFR

1804 36490
1852 36490

50 CFR

679 36492

Rules and Regulations

Federal Register

Vol. 66, No. 134

Thursday, July 12, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–269–AD; Amendment 39–12319; AD 2001–14–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes, Model MD–10 Series Airplanes, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes, that requires repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. This amendment is necessary to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). 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, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5346; fax (562) 627–5210.

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 McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes was published in the **Federal Register** on November 27, 2000 (65 FR 70671). That action proposed to require repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests to Extend the Compliance Times

One commenter requests that the initial inspection be revised to within 18 months after the effective date of the AD, and the repetitive inspections to every 18 months thereafter. The commenter states that its ''light check'' (LCK) is accomplished every 18 months, and that such a multiple-day maintenance visit is more appropriate for the type of detailed inspection specified in the proposed rule. The commenter notes that such a revision to the compliance times would simplify its ability to perform the inspection during an appropriate maintenance visit. The commenter also states that experience indicates that a mean time of 12,192 flight hours occurs between unscheduled removal of the auxiliary hydraulic pump. Therefore, performing repetitive inspections in conjunction with the LCK would result in inspections occurring at approximately every 6,000 hours, which is less than half the current mean time between unit removals (MTBUR). Further, the commenter concludes that adjustment of the repetitive interval to every 18 months would provide an equivalent level of safety.

The FAA partially agrees with the commenter's request. In developing the proposed compliance times for this AD action, we considered not only the degree of urgency associated with the addressing the subject unsafe condition, but also the practical aspect of incorporating the required inspections into the affected operators' maintenance schedules in a timely manner. Based on the information submitted by the commenter, we have determined that exending the repetitive inspection interval to every 6,000 flight hours or 18 months, whichever occurs first, will provide an acceptable level of safety. The final rule has been revised accordingly. However, in consideration of the urgency of the unsafe condition in this case, we can find no basis to allow similar escalation for the initial inspection.

Another commenter requests that the initial compliance time be extended to 9 or 12 months. The commenter expresses a concern that there may not be enough spare auxiliary pumps to support the compliance times specified in the proposed rule.

The FAA does not concur with the commenter's request based on its concern for spare parts availability. We have had no confirmation from the manufacturer that a problem exists with the availability of the auxiliary pumps. However, under paragraph (e) of this AD, a request for an alternative method of compliance may be submitted to the FAA if availability of the pumps should become a concern in the future.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 604 Model DC–10, MD–10, and MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 396 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 inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $23,760, or $60 per airplane, per inspection cycle.

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:

2001–14–08 McDonnell Douglas: Amendment 39–12319. Docket 2000–NM–269–AD.

Applicability: Model DC–10 and MD–10 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; and Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Inspection

(a) Do a detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For Model DC–10 and MD–10 series airplanes: Inspect within 6 months after the effective date of this AD.

(2) For Model MD–11 series airplanes that have accumulated 3,000 flight hours or more as of the effective date of this AD: Inspect within 6 months after the effective date of this AD.

(3) For Model MD–11 series airplanes that have accumulated less than 3,000 flight hours as of the effective date of this AD: Inspect within 6 months after accumulating 3,000 flight hours.

Condition 1, No Failures: Repetitive Inspections

(b) If no failures are detected during the inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(c) If any pump motor fails during any inspection required by paragraph (a) of this AD, before further flight, replace the auxiliary hydraulic pump with a serviceable pump, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspections

(d) If any wiring fails during any inspection required by paragraph (a) of this AD, before further flight, troubleshoot and repair the wiring, per McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999 (for Model DC–10 and MD–10 series airplanes); or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 1999 (for Model MD–11 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 6,000 flight hours or every 18 months, whichever occurs first.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) 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

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–29A142, Revision 01, dated October 21, 1999; or McDonnell Douglas Alert Service Bulletin MD11–29A057, Revision 01, dated October 21, 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17120 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–251–AD; Amendment 39–12318; AD 2001–14–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive high frequency eddy current inspections to find cracking of the bulkhead frame support at body station 2598 under the hinge support fittings of the horizontal stabilizer, and repair if cracking is found. These actions are necessary to find and fix fatigue cracking in the frame support, which could result in inability of the structure to carry horizontal stabilizer flight loads and reduced controllability of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 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: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; 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 all Boeing Model 747 series airplanes was published in the **Federal Register** on February 21, 2001 (66 FR 10974). That action proposed to require repetitive high frequency eddy current inspections to find cracking of the bulkhead frame support at body station 2598 under the hinge support fittings of the horizontal stabilizer, and repair if cracking is found.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Revised Service Information

Two commenters ask that the FAA approve Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001, as another source of service information for doing the actions specified in the proposed rule. The proposed rule cited Boeing Alert Service Bulletin 747–53A2449, dated June 8, 2000, as the proper source of service information for doing the specified actions.

One commenter, the manufacturer, states that the revised service bulletin changes the airplane effectivity by limiting the affected airplanes to line numbers (L/N) 1 through 1307, inclusive. Airplanes delivered after L/N 1307 have been redesigned to reduce the possibility of early cracking of the bulkhead in the subject area. The revised bulletin also corrects the bolt torque values specified in the original issue of the service bulletin. The commenter adds that using the torque values in the original issue could lead to over-torque of the bolts during installation.

Another commenter suggests that, when a revised service bulletin is released, it should specify the correct torque values for the shear bolts, or reference the Structural Repair Manual, Chapter 51–30–04 or 51–40–04. The commenter adds that the manufacturer informed the commenter by telex that, if the shear bolts are torqued per the service bulletin specified in the proposed rule, they will be over-torqued. The commenter does not intend to do the inspections until a revised service bulletin is issued, in order to minimize the risk of over-torquing the shear bolts and to avoid the need to rework and replace the bolts.

The FAA concurs with the commenters and has reviewed and approved Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001; which is referenced in the final rule as the proper source of service information for doing the actions specified. Accordingly, the applicability section has been changed to specify Model 747 series airplanes, as listed in Revision 1 of the service bulletin; the number of airplanes, as well as the number of work hours, which were increased in Revision 1 of the service bulletin, have been changed in the cost impact section; and a new Note 2 has been added to specify that actions done before the effective date of this AD, per the original issue of the service bulletin, are acceptable for compliance with paragraph (a) of the final rule.

Although the torque values have been corrected in the revised service bulletin, operators who used the incorrect torque values during re-installation of the bolts can wait until the next repeat inspection to use the correct torque values. We have determined that over-torqued bolts will not compromise safety, as long as the bolts are properly torqued during the next repeat inspection.

Extend Compliance Time

One commenter asks that the compliance time for the proposed rule be extended from before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; to before the accumulation of 10,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later. The commenter states that its recommendation will allow the accomplishment of the initial inspection during its regularly scheduled heavy maintenance checks, while still maintaining an equivalent level of safety.

The FAA does not concur with the commenter's request because the cracking of the bulkhead frame support is caused by fatigue, which is contingent on the number of accumulated flight cycles. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. We have determined that before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, represents an appropriate compliance time allowable for the initial inspection to be accomplished during scheduled maintenance intervals. However, under the provisions of paragraph (c) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Terminating Action

One commenter asks that a terminating action, such as oversizing the subject fastener holes, be provided by the manufacturer. The commenter states that this would alleviate potential structural damage caused by the repeated fastener and sealant removal, and installation at a critical joint. The FAA agrees with the intent of the comment, but until the manufacturer provides adequate service information giving procedures for a terminating action, such action cannot be added. If terminating action becomes available in the future, we may consider additional rulemaking. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,147 airplanes of the affected design in the worldwide fleet. The FAA estimates that 261 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours (9 work hours per side) per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $281,880, or $1,080 per airplane, per inspection cycle.

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:

2001–14–07 Boeing: Amendment 39–12318. Docket 2000–NM–251–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the bulkhead frame support at body station (BS) 2598 under the hinge support fittings of the horizontal stabilizer, which could result in inability of the structure to carry horizontal stabilizer flight loads and reduced controllability of the horizontal stabilizer, accomplish the following:

Repetitive High Frequency Eddy Current (HFEC) Inspections

(a) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do an open-hole HFEC inspection to find cracking of the bulkhead frame support under the hinge support fittings of the horizontal stabilizer on the left and right sides at BS 2598, per Figure 2 of

the Accomplishment Instructions of Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles.

Note 2: Inspections accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2449, dated June 8, 2000, are considered acceptable for compliance with the applicable inspection specified in paragraph (a) of this AD.

Repair

(b) If any cracking is found during any inspection required by paragraph (a) of this AD, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(d) Special flight permits may be issued in accordance with 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

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001. 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

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17119 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–39–AD; Amendment 39–12316; AD 2001–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–300, –400, and –500 series airplanes, that requires repetitive inspections of certain connectors located in the main wheel wells to detect discrepancies; and corrective action, if necessary. This amendment is prompted by reports indicating engine shutdown during flight due to uncommanded movement of the engine shutoff valve. These actions are necessary to detect and correct discrepancies of certain connectors located in the main wheel wells, which could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: 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 all Boeing Model 737–300, –400, and –500 series airplanes was published in the **Federal Register** on August 28, 2000 (65 FR 52049). That action proposed to require repetitive inspections of certain connectors located in the main wheel wells to detect discrepancies; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Supportive Comment

One commenter states that it has done the initial inspection specified in the proposed rule, and is in agreement with the recommendation for continued repetitive inspections.

Typographical Errors

Two commenters note that there are two typographical errors in Boeing Service Letter 737–SL–24–138, dated May 24, 1999; which is specified in the proposed rule as the service information necessary to do the inspections and corrective action. The first error is on page 3 of the service letter. Action #4 identifies ''connector D51641;'' the correct number for the connector is D5164J. The FAA agrees that the identification of connector D51641 is in error and has revised paragraph (a) of the final rule to identify each affected connector. This action will eliminate any confusion as to which connectors require inspection, and will minimize the possibility of operators performing the inspections on the wrong connector.

The second error is in the ''References,'' section on page 1 of the service letter and identifies ''Dt–54446, Standard Wiring Practice Manual, Subject 20–60–08;'' the correct reference is D6–54446. The FAA agrees that this is an incorrect reference and has advised the manufacturer accordingly. As this change is minor and not part of any procedures specified for doing the actions in the final rule, no change to the final rule is necessary in this regard.

Extend Compliance Time

Two commenters request an extension of the compliance time for the

inspections specified in paragraph (a) of the proposed rule.

One commenter asks that the compliance time for the initial inspection be extended from 12 months after the effective date of the AD, to the later of 12 months or 3,000 flight cycles after the effective date of the AD. The commenter also asks that the repetitive inspections be accomplished at the later of 18 months or 4,500 flight hours, instead of at intervals of 18 months. The commenter states that this extension is requested so it can do the inspections at a 'C'-check. The commenter adds that this would provide the opportunity for operators to accomplish the work at a scheduled maintenance visit, instead of scheduling special visits.

The FAA does not concur to extend the compliance time for doing the initial inspection to the later of 12 months or 3,000 flight cycles. Such an extension may allow airplanes with low utilization rates to go without being inspected for several years. The present condition of the electrical connectors on each airplane is unknown, and contaminated electrical connectors are subject to corrosion regardless of whether or not the airplane is accumulating flight cycles. After doing the initial inspection, and, if necessary, correcting any discrepancies, the electrical connectors will be in a known condition for safe operation of the airplane. In this case, we concur that the repetitive inspection interval can be extended somewhat, but the interval of 4,500 flight hours will not provide an adequate level of safety for airplanes with low utilization rates, as stated above.

Another commenter asks that the compliance time for the repetitive inspections be extended from 12 months to 24 months. The commenter states that this would allow it to accomplish the required actions during regularly scheduled maintenance intervals.

We concur with the commenter and have extended the 18-month repetitive inspection interval specified in paragraph (a) of this final rule to 24 months.

Optional Terminating Action

One commenter asks that optional terminating action be included for the repetitive inspections specified in paragraph (a) of the proposed rule. The commenter suggests two possible terminating actions, as follows:

- Inspect the connectors in accordance with the service letter and replace the spare pins and filler plugs with pins that have spare wires installed. (This action would provide the same level of sealing capability as the existing wires terminated within the connector.) Or
- Replace the existing connectors with new connectors having no spare pin positions. (This action would completely remove any potential of contaminants entering through a spare pin location.)

The FAA does not concur. Missing filler rods or spare contacts could not be verified in two of the three incidents that were reported to us. As a result, we have not been able to determine the path of the contamination that entered the connectors. It is possible that contaminants could enter the connectors despite the presence of filler rods and contacts with wires. Without verification of the cause of the path of contamination, repetitive inspections are required to ensure that electrical arcing and uncommanded closure of the engine fuel shut-off valves do not occur. Termination of the repetitive inspections will necessitate design changes that will decrease the effects of connector contamination. Should the manufacturer develop such design changes, we may consider additional rulemaking in the future. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,974 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 755 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 inspection, and that the average labor rate is $60 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $45,300, or $60 per airplane, per inspection cycle.

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:

2001–14–06 Boeing: Amendment 39–12316. Docket 2000-NM–39–AD.

Applicability: All Model 737–300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct discrepancies of certain connectors located in the main wheel wells, which could result in electrical arcing of the connectors, uncommanded movement of the engine fuel shut-off valves to the closed position, and consequent in-flight loss of thrust or engine shutdown from lack of fuel, accomplish the following:

Repetitive Inspections/Corrective Action

(a) Within 12 months after the effective date of this AD: Perform a detailed visual inspection of connectors D5162P, D5162J, D5164P, and D5164J (connectors are linked to the fuel shut-off valves and outboard landing lights), located in the main wheel wells, to detect discrepancies (missing spare contacts and filler rods, improper plugs or filler rods, or contamination or corrosion), as specified in Boeing Service Letter 737–SL–24–138, dated May 24, 1999. Repair any discrepancies in accordance with the service letter, and repeat the inspection thereafter at intervals not to exceed 24 months.

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

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

Special Flight Permit

(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 Boeing Service Letter 737–SL–24–138, including attachment, dated May 24, 1999. 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 August 16, 2001.

Issued in Renton, Washington, on July 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17117 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–245–AD; Amendment 39–12326; AD 2001–14–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Modified by Supplemental Type Certificate SA8843SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW, that requires modifying the passenger entertainment system (PES) installed by that STC and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

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 all Boeing Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW was published in the **Federal Register** on March 2, 2001 (66 FR 13219). That action proposed to require modifying the passenger entertainment system installed by that STC and revising the Airplane Flight Manual.

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

None of the airplanes affected by this AD are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S.

Register in the future, it will take approximately 80 work hours to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $94,574 per airplane. Based on these figures, the cost impact of the required modification would be $99,374.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required manual revision would be $60.

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:

2001–14–15 Boeing: Amendment 39–12326. Docket 2000–NM–245–AD.

Applicability: Model 747–400 series airplanes modified by Supplemental Type Certificate (STC) SA8843SW, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the entire passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES to install load shed relays and associated cable assemblies for the PES, in accordance with Raytheon Service Bulletin 747(400)VIP–24–1, dated September 22, 2000.

(2) Revise the Non-Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the ''UTILITY BUS ON/OFF'' power switches to control power to the PES, in accordance with Raytheon Airplane Flight Manual Supplement 747–430, dated October 17, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES system in accordance with STC SA8843SW on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane 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, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 747(400)VIP–24–1, dated September 22, 2000; and Raytheon Airplane Flight Manual Supplement 747–430, dated October 17, 2000. Raytheon Airplane Flight Manual Supplement 747–430 contains the following list of effective pages:

Page No.	Date shown on page
Log of Pages Page 1	October 17, 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 Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17163 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–244–AD; Amendment 39–12325; AD 2001–14–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP Series Airplanes Modified by Supplemental Type Certificate ST09097AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D, that requires modifying the passenger entertainment system (PES) installed by that STC and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

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 all Boeing Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D was published in the **Federal Register** on March 2, 2001 (66 FR 13216). That action proposed to require modifying the passenger entertainment system installed by that STC and revising the Airplane Flight Manual.

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

None of the airplanes affected by this AD are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 72 work hours to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $93,369 per airplane. Based on these figures, the cost impact of the required modification would be $97,689.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required manual revision would be $60.

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:

2001–14–14 Boeing: Amendment 39–12325. Docket 2000–NM–244–AD.

Applicability: Model 747SP series airplanes modified by Supplemental Type Certificate (STC) ST09097AC–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES by installing a power switch and a load-shed circuit breaker as well as associated relays and wiring, in accordance with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000.

(2) Revise the Normal Procedures and Emergency Procedures sections of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the power switch installed by paragraph (a)(1) to remove power from the PES in the event of an emergency related to smoke or fire, in accordance with Raytheon Airplane Flight Manual Supplement 747SP–21, dated October 16, 2000, which is supplied with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09097AC–D, on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane 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, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 747(SP)VIP–24–1, dated September 22, 2000; and Raytheon Airplane Flight Manual Supplement 747SP–21, dated October 16, 2000. Raytheon Airplane Flight Manual Supplement 747SP–21 contains the following list of effective pages:

Page No.	Date shown on page
List of Effective Pages: LOEP Page 1	October 16, 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 Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17162 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–243–AD; Amendment 39–12324; AD 2001–14–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 Series Airplanes Modified by Supplemental Type Certificate ST09022AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–200 series airplanes modified by Supplemental Type Certificate ST09022AC–D, that requires modifying the passenger entertainment system (PES) and revising the Airplane Operations Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the entire PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

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 all Boeing Model 767–200 series airplanes modified by Supplemental Type Certificate ST09022AC–D was published in the **Federal Register** on March 2, 2001 (66 FR 13213). That action proposed to require modifying the passenger entertainment system and revising the Airplane Operations Manual.

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

None of the airplanes affected by this action are on the U.S. Register. The single airplane included in the applicability of this AD currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD action. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 80 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $165,673 per airplane. Based on these figures, the cost impact of this modification would be $170,473.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour to accomplish the required manual revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the manual revision would be $60.

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:

2001–14–13 Boeing: Amendment 39–12324. Docket 2000–NM–243–AD.

Applicability: Model 767–200 series airplanes modified by Supplemental Type Certificate (STC) ST09022AC–D, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the entire passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Operations Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES to install a load shed relay and associated wiring for the Airshow System portion of the PES, in accordance with Raytheon Service Bulletin 767VIP–24–1, dated August 28, 2000.

(2) Revise the Airplane Operations Manual to describe the function of the utility bus power switch located on the flight deck, including the use of this switch to remove power to the PES, in accordance with Raytheon Airplane Operations Manual Supplement 767–27G, dated October 18, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09022AC-D on any airplane, unless it is modified and the Airplane Operations Manual is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane 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, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 767VIP–24–1, dated August 28, 2000; and Raytheon Airplane Operations Manual Supplement 767–27G, dated October 18, 2000. (Only the title page of Raytheon Airplane Operations Manual Supplement 767–27G is dated; no other page of the document contains this information.) 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 Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. 1

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17161 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–242–AD; Amendment 39–12323; AD 2001–14–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700IGW Series Airplanes Modified by Supplemental Type Certificate ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D. This AD requires modifying the passenger entertainment system (PES) installed by those STC's and revising the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the PES when necessary and is advised of appropriate procedures for such action. Inability to remove power from the PES during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, ASW–150, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

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 all Boeing Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D, was published in the **Federal Register** on March 2, 2001 (66 FR 13210). That action proposed to require modifying the passenger entertainment system installed by those STC's and revising the Airplane Flight Manual (AFM).

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

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 4 Model 737–700IGW series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

It will take approximately 141 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $95,968 per airplane. Based on these figures, the cost impact of the modification in this AD on U.S. operators is estimated to be $208,856, or $104,428 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision in this AD on U.S. operators is estimated to be $120, or $60 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:

2001–14–12 Boeing: Amendment 39–12323. Docket 2000–NM–242–AD.

Applicability: Model 737–700IGW series airplanes modified by Supplemental Type Certificate (STC) ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the passenger entertainment system (PES) when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, do paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the PES by installing a power switch and a load-shed circuit breaker as well as associated relays and wiring, in accordance with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000.

(2) Revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew on using the power switch installed by paragraph (a)(1) to remove power from the PES in the event of an emergency related to smoke or fire, in accordance with Raytheon Airplane Flight Manual Supplement B737–700 IGW, dated October 16, 2000, which is supplied with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a PES in accordance with STC ST09100AC–D, ST09104AC–D, ST09105AC–D, or ST09106AC–D on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane 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, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000; and Raytheon Airplane Flight Manual Supplement B737–700 IGW, dated October 16, 2000. Raytheon Airplane Flight Manual Supplement B737–700 IGW contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages: Page 1	Original	October 16, 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 Raytheon Systems Company, Intelligence Information and Aircraft Integration Systems, 7500 Maehre Road, Waco, Texas 76705. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17160 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–240–AD; Amendment 39–12322; AD 2001–14–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes Modified by Supplemental Type Certificate SA8622SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate SA8622SW, that requires deactivation of the in-flight entertainment (IFE) system. This action is necessary to ensure that the flight crew is able to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Continental Airlines, Inc., 600 Jefferson Street HQJAV, Houston, Texas 77002. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox, Aerospace Engineer, ASW–150, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5139; fax (817) 222–5960.

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 all Boeing Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate SA8622SW was published in the **Federal Register** on March 2, 2001 (66 FR 13204). That action proposed to require deactivation of the in-flight entertainment system.

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 8 Model 747–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 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 actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $480, 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:

2001–14–11 Boeing: Amendment 39–12322. Docket 2000–NM–240–AD.

Applicability: Model 747–100 and –200 series airplanes modified by Supplemental Type Certificate (STC) SA8622SW, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove power from the in-flight entertainment (IFE) system when necessary; which, if not done during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Deactivation

(a) Within 18 months after the effective date of this AD, deactivate the IFE system, in accordance with Continental Airlines Engineering Change/Repair Authorization 2330–02321, 2330–02322, 2330–02323, 2330–02324, 2330–02325, 2330–02326, 2330–02327, or 2330–02328; all dated August 29, 2000; as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC SA8622SW on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Airplane 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, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Continental Airlines Engineering Change/Repair Authorization 2330–02321, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02322, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02323, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02324, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02325, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02326, dated August 29, 2000; Continental Airlines Engineering Change/Repair Authorization 2330–02327, dated August 29, 2000; or Continental Airlines Engineering Change/Repair Authorization 2330–02328, dated August 29, 2000; as applicable. (Only the first page of these documents contains the document date; no other page contains this information.) 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 Continental Airlines, Inc., 600 Jefferson Street HQJAV, Houston, Texas 77002. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Fort

Worth Airplane Certification Office, 2601 Meacham Blvd., Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17159 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–237–AD; Amendment 39–12321; AD 2001–14–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300 Series Airplanes Modified by Supplemental Type Certificate ST00171SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–300 series airplanes modified by Supplemental Type Certificate ST00171SE, that requires installation of a master switch to apply and remove power from the in-flight entertainment (IFE) system, and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Flight Structures, Inc., 4407 172nd Street NE., Arlington, Washington 98223. 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: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: 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 all Boeing Model 737–300 series airplanes modified by Supplemental Type Certificate (STC) ST00171SE was published in the **Federal Register** on March 2, 2001 (66 FR 13198). That action proposed to require installation of a master switch to apply and remove power from the in-flight entertainment (IFE) system, and revision of the Airplane Flight Manual.

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

None of the Model 737–300 series airplanes modified by STC ST00171SE are on the U.S. Register. The single airplane included in the applicability of this rule currently is operated by a non-U.S. operator under foreign registry; therefore, it is not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future.

Should the affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 24 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,500 per airplane. Based on these figures, the cost impact of this AD would be $2,940 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:

2001–14–10 Boeing: Amendment 39–12321. Docket 2000–NM–237–AD.

Applicability: Model 737–300 series airplanes modified by Supplemental Type Certificate (STC) ST00171SE, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Installation of Power Switch and Revision of Airplane Flight Manual

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Flight Structures Service Bulletin 94FS492–23–01, Revision 2, dated September 21, 2000.

(1) Install a master switch to apply and remove power from the IFE system.

(2) Insert the Temporary Revision included in the service bulletin into the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), to advise the flight crew on procedures for using the master switch installed in accordance with paragraph (a)(1) of this AD. Once the AFM has been formally revised to include the information in the Temporary Revision, the Temporary Revision may be removed from the AFM.

Spares

(b) As of the effective date of this AD, no person may install an IFE system in accordance with STC ST00171SE on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Flight Structures Service Bulletin 94FS492–23–01, Revision 2, dated September 21, 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 Flight Structures, Inc., 4407 172nd Street NE., Arlington, Washington 98223. 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

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on July 3, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17158 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–229–AD; Amendment 39–12312; AD 2001–14–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–51 and DC–9–83 Series Airplanes Modified by Supplemental Type Certificate SA8026NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate SA8026NM, that requires deactivation of the in-flight entertainment (IFE) system and removal of the system from the airplane. This action is necessary to prevent the inability of the flight crew to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective August 16, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Hollingsead International, Inc., 7416 Hollister Avenue, Goleta, California 93117. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

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 all McDonnell Douglas Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate SA8026NM was published in the **Federal Register** on March 2, 2001 (66 FR 13187). That action proposed to require deactivation of the in-flight entertainment (IFE) system and removal of the system from the airplane.

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

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 6 airplanes of the affected design in the worldwide fleet. The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these

figures, the cost impact of this AD on U.S. operators is estimated to be $720, or $240 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:

2001–14–02 McDonnell Douglas: Amendment 39–12312. Docket 2000–NM–229–AD.

Applicability: Model DC–9–51 and DC–9–83 series airplanes modified by Supplemental Type Certificate (STC) SA8026NM, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to remove power from the in-flight entertainment (IFE) system when necessary; which, during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Deactivation and Removal

(a) Within 18 months after the effective date of this AD, deactivate the IFE system and remove the system from the airplane, in accordance with Hollingsead International Service Bulletin 2526–2332–001, dated July 19, 2000.

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC SA8026NM on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Hollingsead International Service Bulletin 2526–2332–001, dated July 19, 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 Hollingsead International, Inc., 7416 Hollister Avenue, Goleta, California 93117. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 16, 2001.

Issued in Renton, Washington, on June 29, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17156 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 102]

Staff Accounting Bulletin No. 102

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin expresses certain of the staff's views on the development, documentation, and application of a systematic methodology as required by Financial Reporting Release No. 28 for determining allowances for loan and lease losses in accordance with generally accepted accounting principles. In particular, the guidance focuses on the documentation the staff normally would expect registrants to prepare and maintain in support of their allowances for loan losses. The guidance in this staff accounting bulletin is being issued in light of the March 10, 1999 Joint Interagency Letter to Financial Institutions in which the staff agreed to provide, in parallel with guidance provided by the federal banking agencies, guidance on loan loss allowance methodologies and supporting documentation. On July 6, 2001, the federal banking agencies issued their guidance through the Federal Financial Institutions

Examination Council (FFIEC) as interagency guidance, ''Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions.''

DATES: Effective July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Jenifer Minke-Girard, Office of the Chief Accountant (202–942–4400), or Donald A.Walker, Jr., Division of Corporation Finance (202–942–1799), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; electronic addresses: Minke-GirardJ@sec.gov; WalkerDo@sec.gov.

SUPPLEMENTARY INFORMATION:

Background

In December 1986, the Commission issued Financial Reporting Release No. 28, which added subsection (b), *Procedural Discipline in Determining the Allowance and Provision for Loan Losses to be Reported,* of Section 401.09, *Accounting for Loan Losses by Registrants Engaged in Lending Activities,* to the Codification of Financial Reporting Policies (hereafter referred to as FRR No. 28). In FRR No. 28, the Commission noted that certain registrants had appeared to lack adequate documentation of procedures for performing detailed reviews of loan portfolios and for determining amounts of allowances and provisions for loan losses. The Commission indicated that the staff normally would expect to find ''that the books and records of registrants engaged in lending activities include documentation of: (a) Systematic methodology to be employed each period in determining the amount of loan losses to be reported, and (b) rationale supporting each period's determination that the amounts reported were adequate.''

Since the issuance of FRR No. 28, the Commission's staff has continued to observe, in some cases, insufficient documentation of allowances for loan losses. In the ordinary course of its reviews of filings, the staff asked a number of registrants why significant favorable or unfavorable trends in the quality of the loan portfolio, as evidenced by statistical data presented in Management's Discussion and Analysis and/or in the notes to the financial statements, did not correspond with decreases or increases in the allowance for loan losses reported in the financial statements. Explanations offered by some registrants have indicated a lack of reasoned analysis or discipline in the establishment of the loss allowance. Some registrants assured the staff that they had assessed significant loans individually for impairment, but could not produce documentation demonstrating how the loans were evaluated or how any loan impairment was measured. In other cases, registrants' internal documentation indicating that a particular loan was impaired could not be reconciled with management's ultimate decision not to provide for any loss on that loan. Several registrants that recorded loan loss allowances for pools of loans did not maintain documentation indicating how the amounts of the loan loss allowances were determined or how the amounts related to the composition of the loan pool at any particular balance sheet date.

The staff's observations were similar to those of the General Accounting Office (GAO). In its October 1994 Report to Congressional Committees, *Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports* (GAO Report), the GAO reported its findings resulting from its review of the loan loss reserving practices of 12 depository institutions. One of the GAO's principal findings was that most of the reviewed institutions' loan loss allowances included large supplemental reserves that generally were not linked to an analysis of loss exposure or supported by evidence.[1] The GAO noted: ''Such use of unjustified supplemental reserves can conceal critical changes in the quality of an institution's loan portfolio and undermine the credibility of financial reports.''[2]

In recognition of these concerns, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Commission (together, the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (ALLL) on March 10, 1999 (the Joint Letter). In the Joint Letter, the Agencies announced the establishment of a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic.[3]

On September 7, 2000, the federal banking agencies, working through the FFIEC, sought public comment on a proposed policy statement on ALLL methodologies and documentation practices for banks and savings institutions. After considering the 31 comment letters received on the proposed guidance, the FFIEC issued its final interagency guidance, ''Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions,'' on July 6, 2001. This Staff Accounting Bulletin represents the SEC staff's views relating to methodologies and supporting documentation for the ALLL that should be observed by all public companies in complying with the federal securities laws and the Commission's interpretations. It is also generally consistent with the guidance published by the FFIEC on July 6, 2001.

Loan loss estimates developed without a disciplined methodology or adequate documentation (of both a disciplined methodology and the resulting amounts of loan loss provisions and allowances) can undermine the credibility of an institution's financial statements. A critical function of the independent accountant's examination of the financial statements is to evaluate the reasonableness of accounting estimates made by management, including its estimates of loan impairments and the associated allowance for loan losses.[4] To perform that duty, an auditor must obtain an understanding of how management developed the estimate, and must apply that understanding to the review and testing of the estimation process or its results.[5] The auditor must obtain sufficient competent evidential matter supporting the financial statements, and must give adequate attention to the propriety and accuracy of the data underlying material assumptions and estimates. Chapter 7 of the AICPA Audit and Accounting Guide, *Banks and Savings Institutions* (Audit Guide), states that ''[a]n institution's method of estimating credit losses * * * should * * * be well documented, with clear explanations of the supporting analyses and rationale.''[6] Additionally, the Audit Guide states that ''the institution's conclusions about the appropriate amount [of the loan loss allowance] should be well documented.''[7] Chapter 7[8] provides details of audit procedures to be performed, including procedures that relate to documentary evidence supporting the loan loss allowance. The staff believes that the documentation

[1] Page 5 of GAO Report.

[2] *Ibid.*

[3] The Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA) is in the process of developing guidance on the accounting for loan losses and the techniques for measuring probable incurred losses in a loan portfolio.

[4] See Auditing Accounting Estimates, AU Section 342.04.

[5] See AU Section 342.10.

[6] See paragraph 7.05, item j, in the Audit Guide.

[7] See paragraph 7.14 in the Audit Guide.

[8] See, in particular, the section on Auditing in paragraphs 7.34 to 7.74.

described in this Staff Accounting Bulletin regarding a registrant's loan loss allowance methodologies, policies, procedures, and decisions is likely to be necessary for most registrants with material loan portfolios in order to provide sufficient competent evidential matter that auditors must consider in accordance with GAAS.[9]

The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: July 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 102 to the table found in Subpart B.

Staff Accounting Bulletin No. 102

Note: The text of Staff Accounting Bulletin No. 102 will not appear in the Code of Federal Regulations.

The staff hereby revises the title of Topic 6 of the Staff Accounting Bulletin Series to be ''Interpretations of Accounting Series Releases and Financial Reporting Releases'' and adds Section L entitled ''Financial Reporting Release No. 28—Accounting for Loan Losses by Registrants Engaged in Lending Activities'' to Topic 6.

Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

* * * * *

L. Financial Reporting Release No. 28—Accounting for Loan Losses by Registrants Engaged in Lending Activities

1. Accounting for Loan Losses—General

Generally accepted accounting principles (GAAP) for recognition of loan losses is provided by Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (SFAS No. 5) and No. 114, *Accounting by Creditors for Impairment of a Loan* (SFAS No. 114).[10] An estimated loss from a loss contingency, such as the collectibility of receivables, should be accrued when, based on information available prior to the issuance of the financial statements, it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated.[11] SFAS No. 114 provides more specific guidance on measurement of loan impairment and related disclosures but does not change the fundamental recognition criteria for loan losses provided by SFAS No. 5. Additional guidance on the recognition, measurement, and disclosure of loan losses is provided by Emerging Issues Task Force (EITF) Topic No. D–80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (EITF Topic D–80), FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss* (FIN 14), and the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, *Banks and Savings Institutions.*

Further guidance for SEC registrants is provided by Financial Reporting Release No. 28, which added subsection (b), *Procedural Discipline in Determining the Allowance and Provision for Loan Losses to be Reported,* of Section 401.09, *Accounting for Loan Losses by Registrants Engaged in Lending Activities,* to the Codification of Financial Reporting Policies (hereafter referred to as FRR No. 28). Additionally, public companies are required to comply with the books and records provisions of the Securities Exchange Act of 1934 (Exchange Act). Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

This staff interpretation applies to all registrants that are creditors in loan transactions that, individually or in the aggregate, have a material effect on the registrant's financial statements.[12]

2. Developing and Documenting a Systematic Methodology

2.A. Developing a Systematic Methodology. *Facts:* Registrant A, or one of its consolidated subsidiaries, engages in lending activities and is developing or performing a review of its loan loss allowance methodology.

Question 1: What are some of the factors or elements that the staff normally would expect Registrant A to consider when developing (or subsequently performing an assessment of) its methodology for determining its loan loss allowance under GAAP?

Interpretive Response: The staff normally would expect a registrant that engages in lending activities to develop and document a systematic methodology[13] to determine its provision for loan losses and allowance for loan losses as of each financial reporting date. It is critical that loan loss allowance methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process. A registrant's loan loss allowance methodology is influenced by entity-specific factors, such as an entity's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, as indicated in the AICPA Audit and Accounting Guide, *Banks and Savings Institutions* (Audit Guide), ''[w]hile different institutions may use different methods, there are certain common elements that should be included in any [loan loss allowance] methodology for it to be effective.''[14] A registrant's loan loss allowance methodology generally should:[15]

- Include a detailed analysis of the loan portfolio, performed on a regular basis;
- Consider all loans (whether on an individual or group basis);
- Identify loans to be evaluated for impairment on an individual basis under SFAS No. 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under SFAS No. 5;
- Consider all known relevant internal and external factors that may affect loan collectibility;
- Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;

[9] In responding to requests for comment on the interagency guidance published by the FFIEC, AcSEC stated:

''Although AcSEC agrees that documentation is needed to support loss recognition, AcSEC believes the Policy Statement should make clear that financial institutions may not avoid recognizing losses by deliberately failing to comply with the Policy Statement's documentation requirements.'' The Commission's staff agrees with the statement made by AcSEC and reiterates that the statements made herein represent interpretations and examples of documentation that are likely to be necessary for sufficient competent evidential matter in the course of an audit in accordance with GAAS. Failure to adequately document the loan loss allowance is not in accordance with GAAP (see paragraphs 7.05 and 7.14 in the Audit Guide) and can also demonstrate a lack of adequate internal accounting controls.

[10] As amended by Statement of Financial Accounting Standards No. 118, *Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures.*

[11] Paragraph 8 of SFAS No. 5.

[12] For purposes of this interpretation, a loan is defined (consistent with paragraph 4 of SFAS No. 114) as a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor's statement of financial position. For purposes of this interpretation, loans do not include trade accounts receivable or notes receivable with terms less than one year or debt securities subject to the provisions of FASB Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities.*

[13] FRR No. 28 states that ''* * * the Commission's staff normally would expect to find that the books and records of registrants engaged in lending activities include documentation of [the]: (a) systematic methodology to be employed each period in determining the amount of the loan losses to be reported, and (b) rationale supporting each period's determination that the amounts reported were adequate.''

[14] See paragraph 7.05 of the Audit Guide.

[15] *Ibid.*

• Consider the particular risks inherent in different kinds of lending;

• Consider current collateral values (less costs to sell), where applicable;

• Require that analyses, estimates, reviews and other loan loss allowance methodology functions be performed by competent and well-trained personnel;

• Be based on current and reliable data;

• Be well documented, in writing, with clear explanations of the supporting analyses and rationale (see *Question 2* below for staff views on documenting a loan loss allowance methodology); and

• Include a systematic and logical method to consolidate the loss estimates and ensure the loan loss allowance balance is recorded in accordance with GAAP.

For many entities engaged in lending activities, the allowance and provision for loan losses are significant elements of the financial statements. Therefore, the staff believes it is appropriate for an entity's management to review, on a periodic basis, its methodology for determining its allowance for loan losses.[16] Additionally, for registrants that have audit committees, the staff believes that oversight of the financial reporting and auditing of the loan loss allowance by the audit committee can strengthen the registrant's control system and process for determining its allowance for loan losses.[17]

A systematic methodology that is properly designed and implemented should result in a registrant's best estimate of its allowance for loan losses.[18] Accordingly, the staff normally would expect registrants to adjust their loan loss allowance balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted loan loss allowance balance in the general ledger.[19]

2.B. Documenting a Systematic Methodology

Question 2: Assume the same facts as in Question 1. What would the staff normally expect Registrant A to include in its documentation of its loan loss allowance methodology?

Interpretive Response: In FRR No. 28, the Commission provided guidance for documentation of loan loss provisions and allowances for registrants engaged in lending activities. The staff believes that appropriate written supporting documentation for the loan loss provision and allowance facilitates review of the loan loss allowance process and reported amounts, builds discipline and consistency into the loan loss allowance determination process, and improves the process for estimating loan losses by helping to ensure that all relevant factors are appropriately considered in the allowance analysis. The staff, therefore, normally would expect a registrant to document the relationship between the findings of its detailed review of the loan portfolio and the amount of the loan loss allowance and the provision for loan losses reported in each period.[20]

The staff normally would expect to find that registrants maintain written supporting documentation for the following decisions, strategies, and processes:[21]

• Policies and procedures:

• Over the systems and controls that maintain an appropriate loan loss allowance, and

• Over the loan loss allowance methodology;

• Loan grading system or process;

• Summary or consolidation of the loan loss allowance balance;

• Validation of the loan loss allowance methodology; and

• Periodic adjustments to the loan loss allowance process.

Question 3: The *Interpretive Response* to Question 2 indicates that the staff normally would expect to find that registrants maintain written supporting documentation for their loan loss allowance policies and procedures. In the staff's view, what aspects of a registrant's loan loss allowance internal accounting control systems and processes would appropriately be addressed in its written policies and procedures?

Interpretive Response: The staff is aware that registrants utilize a wide range of policies, procedures, and control systems in their loan loss allowance processes, and these policies, procedures, and systems are tailored to the size and complexity of the registrant and its loan portfolio. However, the staff believes that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures for the systems and controls that maintain an appropriate loan loss allowance would likely address the following:

• The roles and responsibilities of the registrant's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine or review, as applicable, the loan loss allowance to be reported in the financial statements;[22]

• The registrant's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;[23]

• The description of the registrant's systematic methodology, which should be consistent with the registrant's accounting policies for determining its loan loss allowance (see *Question 4* below for further discussion);[24] and

[16] For federally insured depositry institutions, the December 21, 1993 ''Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL)'' (the 1993 Interagency Policy Statement) indicates that boards of directors and management have certain responsibilities for the ALLL process and amounts reported. For example, as indicated on page 4 of that statement, ''the board of directors and management are expected to: Ensure that the institution has an effective loan review system and control * * * [;] Ensure the prompt charge-off of loans, or portions of loans, that available information confirms to be uncollectible[; and] Ensure that the institution's process for determining an adequate level for the ALLL is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio.* * *''

[17] Statement on Auditing Standards No. 61, *Communication With Audit Committees* (as amended by Statement on Auditing Standards No. 90, *Audit Committee Communications*) (SAS No.61) states, in part:

''In connection with each SEC engagement * * * the auditor should discuss with the audit committee the auditor's judgments about the quality, not just the acceptability, of the entity's accounting principles as applied in its financial reporting * * * The discussion should * * * include items that have a significant impact on the representational faithfulness, verifiability, and neutrality of the accounting information included in the financial statements. [Footnote omitted.] Examples of items that may have such an impact are the following:

• Selection of new or changes to accounting policies

• Estimates, judgments, and uncertainties

• Unusual transactions

• Accounting policies relating to significant financial statement items, including the timing or transactions and the period in which they are recorded. * * *''

[18] Registrants should also refer to FIN 14, which provides accounting and disclosure guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range.

[19] Registrants should refer to the guidance on materiality in SEC Staff Accounting Bulletin No. 99, *Materiality* (SAB No. 99).

[20] FRR No. 28 states: ''The specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—*i.e.,* the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods.''

[21] Paragraph 7.39 in the Audit Guide outlines specific aspects of effective internal control related to the allowance for loan losses. These specific aspects include the control environment (''management communication of the need for proper reporting of the allowance''); management reports that summarize loan activity and the institution's procedures and controls (''accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance''); ''independent loan review;'' review of information and assumptions (''adequate review and approval of the allowance estimates by the individuals specified in management's written policy''); assessment of the process (''comparison of prior estimates related to the allowance with subsequent results to assess the reliability of the process used to develop the allowance''); and ''consideration by management of whether the allowance is conistent with the operational plans of the institution.''

[22] Paragraph 7.39 of the Audit Guide discusses ''management communication of the need for proper reporting of the allowance.'' As indicated in that paragraph, the ''control environment strongly influences the effectiveness of the system of controls and * * * reflects the overall attitude, awareness, and action of the board of directors and management concerning the importance of control.''

[23] Paragraph 7.33 of the Audit Guide refers to the documenation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies the entity used to estimate its allowance and related provision for loan losses.

[24] *Ibid.* As indicated in Paragraph 7.33, ''[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments.''

• The system of internal controls used to ensure that the loan loss allowance process is maintained in accordance with GAAP.[25]

The staff normally would expect an internal control system [26] for the loan loss allowance estimation process to:

• Include measures to provide assurance regarding the reliability [27] and integrity of information and compliance with laws, regulations, and internal policies and procedures; [28]

• Reasonably assure that the registrant's financial statements are prepared in accordance with GAAP; and

• Include a well-defined loan review process.[29]

A well-defined loan review process [30] typically contains:

• An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions; [31]

• Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; [32] and

• Clear formal communication and coordination between a registrant's credit administration function, financial reporting group, management, board of directors, and others who are involved in the loan loss allowance determination or review process, as applicable (*e.g.,* written policies and procedures, management reports, audit programs, and committee minutes).[33]

Question 4: The *Interpretive Response* to Question 3 indicates that the staff normally would expect a registrant's written loan loss allowance policies and procedures to include a description of the registrant's systematic allowance methodology, which should be consistent with its accounting policies for determining its loan loss allowance. What elements of a registrant's loan loss allowance methodology would the staff normally expect to be described in the registrant's written policies and procedures?

Interpretive Response: The staff normally would expect a registrant's written policies and procedures to describe the primary elements of its loan loss allowance methodology, including portfolio segmentation and impairment measurement. The staff normally would expect that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures would describe the methodology:

• For segmenting the portfolio:

■ How the segmentation process is performed (*i.e.,* by loan type, industry, risk rates, etc.); [34]

■ When a loan grading system is used to segment the portfolio:

• The definitions of each loan grade;

• A reconciliation of the internal loan grades to supervisory loan grades, if applicable; and

• The delineation of responsibilities for the loan grading system.

• For determining and measuring impairment under SFAS No. 114: [35]

■ The methods used to identify loans to be analyzed individually;

■ For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

• Procedures describing the impairment measurement techniques available; and

• Steps performed to determine which technique is most appropriate in a given situation.

■ The methods used to determine whether and how loans individually evaluated under SFAS No. 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under SFAS No. 5.[36]

• For determining and measuring impairment under SFAS No. 5: [37]

■ How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

■ How loss rates are determined (*e.g.,* historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

■ Descriptions of qualitative factors (*e.g.,* industry, geographical, economic, and political factors) that may affect loss rates or other loss measurements.

3. Applying a Systematic Methodology—Measuring and Documenting Loan Losses Under SFAS No. 114

3.A. Measuring and Documenting Loan Losses under SFAS No. 114—General

Facts: Approximately one-third of Registrant B's commercial loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Registrant B's policies and procedures for individual review for impairment under SFAS No. 114. Upon review of the large balance loans, Registrant B determines that certain of the loans are impaired as defined by SFAS No. 114.[38]

Question 5: For the commercial loans reviewed under SFAS No. 114 that are individually impaired, how would the staff normally expect Registrant B to measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by SFAS No. 114?

Interpretive Response: For those loans that are reviewed individually under SFAS No. 114 and considered individually impaired, Registrant B must use one of the methods for measuring impairment that is specified by SFAS No. 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral).[39] Accordingly, in the circumstances described above, for the loans considered individually impaired under SFAS No. 114, it would not be appropriate for Registrant B to choose a measurement method not prescribed by SFAS No. 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its commercial loans for the past five years.

The staff normally would expect Registrant B to maintain as sufficient, objective evidence [40] written documentation to support

[25] See also paragraph 7.39 in the Audit Guide which provides information about specific aspects of effective internal control related to the allowance for loan losses.

[26] *Ibid.* Public companies are required to comply with the books and records provisions of the Exchange Act. Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

[27] FASB Statement of Concepts No. 2, *Qualitative Characteristics of Accounting Information,* provides guidance on ''reliability'' as a primary quality of accounting information.

[28] Section 13(b)(2)–(7) of the Exchange Act.

[29] As indicated in paragraph 7.05, item a, in the Audit Guide, a loan loss allowance methodology should ''include a detailed and regular analysis of the loan portfolio * * *'' Paragraphs 7.06 to 7.13 provide additional information on how creditors traditionally identify and review loans on an individual basis and review or analyze loans on a group or pool basis.

[30] *Ibid.* Additionally, paragraph 7.39 in the Audit Guide provides guidance on the loan review process. As stated in that paragraph, ''[m]anagement reports summarizing loan activity, renewals, and delinquencies are vital to the timely identification of problem loans.'' The paragraph further states: ''Loan reviews should be conducted by institution personnel who are independent of the underwriting, supervision, and collections functions. The specific lines of reporting depend on the complexity of the institution's organizational structure, but the loan reviewers should report to a high level of management that is independent from the lending process in the institution.''

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

[34] Paragraph 7.07 in the Audit Guide states that ''creditors have traditionally identified loans that are to be evaluated for collectibility by dividing the loan portfolio into different segments. Each segment should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan.'' Paragraph 7.08 provides additional guidance on classifying individual loans and paragraph 7.13 indicates considerations for groups or pools of loans.

[35] See SFAS No. 114, paragraphs 8 through 10 on recognition of impairment and paragraphs 11 through 16 on measurement of impairment. See also the guidance in EITF Topic D–80.

[36] See EITF Topic D–80, Exhibit D–80A, Question #10.

[37] See SFAS No. 5, paragraphs 8(a) and 8(b) on accrual of loss contingencies and paragraphs 22 and 23 on collectibility of receivables. See also the guidance in EITF Topic D–80.

[38] Paragraph 8 of SFAS No. 114 provides that a loan is impaired when, based on current information and events, it is probable that all amounts due will not be collected pursuant to the terms of the loan agreement.

[39] See paragraph 13 of SFAS No. 114.

[40] Under GAAS, auditors should obtain ''sufficient competent evidential matter'' to support

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its measurement of loan impairment under SFAS No. 114.[41] If Registrant B uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors[42] and other information reflecting past events and current conditions. If Registrant B uses the fair value of collateral to measure impairment, the staff normally would expect to find that Registrant B had documented how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser.[43] Similarly, the staff normally would expect to find that Registrant B had documented the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

3.B. Measuring and Documenting Loan Losses under SFAS No. 114 for a Collateral Dependent Loan

Facts: Registrant C has a $10 million loan outstanding to Company X that is secured by real estate, which Registrant C individually evaluates under SFAS No. 114 due to the loan's size. Company X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Registrant C determines that its loan to Company X is impaired, as defined by SFAS No. 114. Because the loan is collateral dependent, Registrant C measures impairment of the loan based on the fair value of the collateral. Registrant C determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Registrant C believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Registrant C adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[44] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million.[45] Given that the recorded investment in the loan is $10 million, Registrant C concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question 6: What documentation would the staff normally expect Registrant C to maintain to support its determination of the allowance for loan losses of $2 million for the loan to Company X?

Interpretive Response: The staff normally would expect Registrant C to document that it measured impairment of the loan to Company X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million.[46] This documentation[47] should include the registrant's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable. Because Registrant C arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.

3.C. Measuring and Documenting Loan Losses under SFAS No. 114—Fully Collateralized Loans

Question 7: In the staff's view, what is an example of an acceptable documentation practice for a registrant to adequately support its determination that no allowance for loan losses should be recorded for a group of loans because the loans are fully collateralized?

Interpretive Response: Consider the following fact pattern: Registrant D has $10 million in loans that are fully collateralized by highly rated debt securities with readily determinable market values. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to maintain a loan-to-value ratio with sufficient margin to absorb volatility in the securities' market prices. Registrant D's collateral department has physical control of the debt securities through safekeeping arrangements. In addition, Registrant D perfected its security interest in the collateral when the funds were originally distributed. On a quarterly basis, Registrant D's credit administration function determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. If there are any collateral deficiencies, Registrant D notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Registrant D has historically not incurred any material losses on these loans. Registrant D believes these loans are fully-collateralized and therefore does not maintain any loan loss allowance balance for these loans.

Registrant D's management summary of the loan loss allowance includes documentation indicating that, in accordance with its loan loss allowance policy, the collateral protection on these loans has been verified by the registrant, no probable loss has been incurred, and no loan loss allowance is necessary. Documentation in Registrant D's loan files includes the two independent market quotes obtained each quarter for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Registrant D's loan loss allowance policy includes a discussion of how to determine when a loan is considered ''fully collateralized'' and does not require a loan loss allowance. Registrant D's policy requires the following factors to be considered and its findings concerning these factors to be fully documented:

- Volatility of the market value of the collateral;
- Recency and reliability of the appraisal or other valuation;
- Recency of the registrant's or third party's inspection of the collateral;
- Historical losses on similar loans;
- Confidence in the registrant's lien or security position including appropriate:
  - Type of security perfection (*e.g.,* physical possession of collateral or secured filing);
  - Filing of security perfection (*i.e.,* correct documents and with the appropriate officials); and
  - Relationship to other liens; and
- Other factors as appropriate for the loan type.

In the staff's view, Registrant D's documentation supporting its determination that certain of its loans are fully collateralized, and no loan loss allowance should be recorded for those loans, is acceptable under FRR No. 28.

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its audit opinion. See AU Section 326, *Evidential Matter.* The staff normally would expect registrants to maintain such evidential matter for its allowances for loan losses for use by the auditors in conducting their annual audit.

[41] Paragraph 7.45 in the Audit Guide outlines sources of information, available from management, that the independent accountant should consider in identifying loans that contain high credit risk or other significant exposures and concentrations. These sources of information would also likely include documentation of loan impairment under SFAS No. 114 or SFAS No. 5. Additionally, as indicated in paragraphs 7.56 to 7.68 of the Audit Guide, the independent accountant, in conducting an audit, may perform a detailed loan file review for selected loans. A registrant's loan files may contain documentation about borrowers' financial resources and cash flows (see paragraph 7.63) or about the collateral securing the loans, if applicable (see paragraphs 7.65 and 7.66).

[42] Question #16 in Exhibit D–80A of EITF Topic D–80 indicates that environmental factors include existing industry, geographical, economic, and political factors.

[43] See paragraphs 7.65 and 7.66 in the Audit Guide for additional information about documentation of loan collateral.

[44] When reviewing collateral dependent loans, Registrant C may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[45] An auditor who uses the work of a specialist, such as an appraiser, in performing an audit in accordance with generally accepted auditing standards (GAAS) should refer to the guidance in AU Section 336, *Using the Work of a Specialist.*

[46] See paragraphs 7.65 to 7.66 in the Audit Guide for further information about documentation of loan collateral and associated audit procedures that may be performed by the independent accountant.

[47] As stated in paragraph 7.14 of the Audit Guide, ''[t]he institution's conclusions about the appropriate amount [of loan impairment and the allowance for loan losses] should be well documented.''

4. Applying a Systematic Methodology—Measuring and Documenting Loan Losses under SFAS No. 5

4.A. Measuring and Documenting Loan Losses under SFAS No. 5—General

Question 8: In the staff's view, what are some general considerations for a registrant in applying its systematic methodology to measure and document loan losses under SFAS No. 5?

Interpretive Response: For loans evaluated on a group basis under SFAS No. 5, the staff believes that a registrant should segment the loan portfolio by identifying risk characteristics that are common to groups of loans.[48] Registrants typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Regardless of the segmentation method used, the staff normally would expect a registrant to maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics. As economic and other business conditions change, registrants often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. The staff normally would expect registrants to maintain documentation to support these segmentation adjustments.[49]

Based on the segmentation of the loan portfolio, a registrant should estimate the SFAS No. 5 portion of its loan loss allowance. For those segments that require an allowance for loan losses,[50] the registrant should estimate the loan losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance.[51] The registrant should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation.[52]

Facts: After identifying certain loans for evaluation under SFAS No. 114, Registrant E segments its remaining loan portfolio into five pools of loans. For three of the pools, it measures loan impairment under SFAS No. 5 by applying historical loss rates, adjusted for relevant environmental factors, to the pools' aggregate loan balances. For the remaining two pools of loans, Registrant E uses a loss estimation model that is consistent with GAAP to measure loan impairment under SFAS No. 5.

Question 9: What documentation would the staff normally expect Registrant E to prepare to support its loan loss allowance for its pools of loans under SFAS No. 5?

Interpretive Response: Regardless of the method used to determine loan loss measurements under SFAS No. 5, Registrant E should demonstrate and document that the loss measurement methods used to estimate the loan loss allowance for each segment of its loan portfolio are determined in accordance with GAAP as of the financial statement date.[53]

As indicated for Registrant E, one method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect the registrant's historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.,* industry, geographical, economic, and political factors) over a defined period of time. If a registrant does not have loss experience of its own, it may be appropriate to reference the loss experience of other companies in the same business, provided that the registrant demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the registrant providing the loss experience.[54] Registrants should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, registrants should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses.[55]

The staff normally would expect that, before employing a loss estimation model, a registrant would evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, registrants that use loss estimation models should typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the objective support for adjustments to the model or its results.[56]

In developing loss measurements, registrants should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affected the loss measurements. Factors that should be considered in developing loss measurements include the following:[57]

- Levels of and trends in delinquencies and impaired loans;
- Levels of and trends in charge-offs and recoveries;
- Trends in volume and terms of loans;
- Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;
- Experience, ability, and depth of lending management and other relevant staff;
- National and local economic trends and conditions;
- Industry conditions; and
- Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, a registrant should maintain sufficient, objective evidence[58] (a) to support the amount of the adjustment and (b) to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

4.B. Measuring and Documenting Loan Losses under SFAS No. 5—Adjusting Loss Rates

Facts: Registrant F's lending area includes a metropolitan area that is financially dependent upon the profitability of a number of manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the manufacturing businesses are experiencing financial

[48] Paragraph 7.07 of the Audit Guide indicates that ''[e]ach segment [of the loan portfolio] should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan.''

[49] Segmentation of the loan portfolio is a standard element in a loan loss allowance methodology. As indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology ''should be well documented, with clear explanations of the supporting analyses and rationale.''

[50] An example of a loan segment that does not generally require an allowance for loan losses is a group of loans that are fully secured by deposits maintained at the lending institution.

[51] FRR No. 28 refers to a ''systematic methodology to be employed each period'' in determining provisions and allowances for loan losses. As indicated in FRR No. 28, the staff normally would expect that the systematic methodology would be documented ''to help ensure that all matters affecting loan collectibility will consistently be identified in the detailed [loan] review process. * * *''

[52] *Ibid.* Also, as indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology ''should be well documented, with clear explanations of the supporting analyses and rationale.'' Further, as indicated in paragraph 7.14 of the Audit Guide, ''[t]he institution's conclusions about the appropriate amount [of the allowance] should be well documented.''

[53] Refer to paragraph 8(b) of SFAS No. 5. Also, as indicated in Exhibit D–80A of EITF Topic D–80, ''[t]he approach for determination of the allowance should be well documented and applied consistently from period to period.'' (See the overview section of Exhibit D–80A and Question #18.)

[54] Refer to paragraph 23 of SFAS No. 5.

[55] Registrants should also refer to FIN 14, which provides guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range. Also, paragraph 7.14 of the Audit Guide notes the use of ''a method that results in a range of estimates for the allowance,'' except for impairment measurement under SFAS No. 114, which is based on ''a single best estimate and not a range of estimates.'' Paragraph 7.14 also states that ''[t]he institution's conclusions about the appropriate amount should be well documented.''

[56] The systematic methodology (including, if applicable, loss estimation models) used to determine loan loss provisions and allowances should be documented in accordance with FRR No. 28, paragraph 7.05 of the Audit Guide, and EITF Topic D–80.

[57] Refer to paragraph 7.13 in the Audit Guide.

[58] AU Section 326 describes the ''sufficient competent evidential matter'' that auditors must consider in accordance with GAAS.

difficulties and have recently announced downsizing plans.

Although Registrant F has yet to confirm an increase in its loss experience as a result of these events, management knows that it lends to a significant number of businesses and individuals whose repayment ability depends upon the long-term viability of the manufacturing businesses. Registrant F's management has identified particular segments of its commercial and consumer customer bases that include borrowers highly dependent upon sales or salary from the manufacturing businesses. Registrant F's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the loan loss allowance. In this particular case, Registrant F has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question 10: How would the staff normally expect Registrant F to document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns? [59]

Interpretive Response: The staff normally would expect Registrant F to document its identification of the particular segments of its commercial and consumer loan portfolio for which it is probable that the manufacturing business' financial downturn has resulted in loan losses. In addition, the staff normally would expect Registrant F to document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments.[60] The staff normally would expect that, as part of its documentation, Registrant F would maintain copies of the documents supporting the analysis, which may include relevant economic reports, economic data, and information from individual borrowers.

Because in this case Registrant F has experienced similar business and lending conditions in the past, it should consider including in its supporting documentation an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. The staff normally would expect that, as part of Registrant F's effective loan loss allowance methodology, it would create a summary of the amount and rationale for the adjustment factor for review by management prior to the issuance of the financial statements.[61]

4.C. Measuring and Documenting Loan Losses under SFAS No. 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Registrant G has outstanding loans of $2 million to Company Y and $1 million to Company Z, both of which are paying as agreed upon in the loan documents. The registrant's loan loss allowance policy specifies that all loans greater than $750,000 must be individually reviewed for impairment under SFAS No. 114. Company Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Company Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the registrant's loan grading system. Despite its concern, management believes Company Z will resolve its problems and determines that neither loan is individually impaired as defined by SFAS No. 114.

Registrant G segments its loan portfolio to estimate loan losses under SFAS No. 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Company Y has risk characteristics similar to the loans included in Segment 1 and the loan to Company Z has risk characteristics similar to the loans included in Segment 2.[62]

In its determination of its loan loss allowance under SFAS No. 5, Registrant G includes its loans to Company Y and Company Z in the groups of loans with similar characteristics (*i.e.,* Segment 1 for Company Y's loan and Segment 2 for Company Z's loan).[63] Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors, provides a reasonable estimate of the registrant's probable loan losses in these segments.

Question 11: How would the staff normally expect Registrant G to adequately document a loan loss allowance under SFAS No. 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: The staff normally would expect that, as part of Registrant G's effective loan loss allowance methodology, it would document its decision to include its loans to Company Y and Company Z in its determination of its loan loss allowance under SFAS No. 5.[64] The staff also normally would expect that Registrant G would document the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively.[65] Additionally, the staff normally would expect Registrant G to maintain documentation to support its method of estimating loan losses for Segment 1 and Segment 2, which typically would include the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates.[66] The registrant would typically maintain copies of the economic and other reports that provided source data.

When measuring and documenting loan losses, Registrant G should take steps to prevent layering loan loss allowances. Layering is the inappropriate practice of recording in the allowance more than one amount for the same probable loan loss. Layering can happen when a registrant includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional loan loss allowance amount.

5. Documenting the Results of a Systematic Methodology

5.A. Documenting the Results of a Systematic Methodology—General

Facts: Registrant H has completed its estimation of its loan loss allowance for the current reporting period, in accordance with GAAP, using its established systematic methodology.

Question 12: What summary documentation would the staff normally expect Registrant H to prepare to support the amount of its loan loss allowance to be reported in its financial statements?

Interpretive Response: The staff normally would expect that, to verify that loan loss allowance balances are presented fairly in accordance with GAAP and are auditable, management would prepare a document that summarizes the amount to be reported in the financial statements for the loan loss allowance.[67] Common elements that the staff

[59] This question and response would also apply to other registrant fact patterns in which the registrant adjusts loss rates for environmental factors.

[60] Paragraph 7.33 of the Audit Guide refers to the documentation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies and methodology the entity used to estimate its allowance and related provision for loan losses. As indicated in paragraph 7.33, ''[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments.''

[61] Paragraph 7.39 in the Audit Guide indicates that effective internal control related to the allowance for loan losses should include ''accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance.''

[62] These groups of loans do not include any loans that have been individually reviewed for impairment under SFAS No. 114 and determined to be impaired as defined by SFAS No.114.

[63] Question #10 in Exhibit D–80A of EITF Topic D–80 states that if a creditor concludes that an individual loan specifically identified for evaluation is not impaired under SFAS No. 114, that loan may be included in the assessment of the allowance for loan losses under SFAS No. 5, but only if specific characteristics of the loan indicate that it is probable that there would be an incurred loss in a group of loans with those characteristics.

[64] Paragraph 7.05 in the Audit Guide indicates that an entity's method of estimating credit losses should ''include a detailed and regular analysis of the loan portfolio,'' ''consider all loans (whether on an individual or poll-of-loans basis),'' ''be based on current and reliable data,'' and ''be well documented, with clear explanations of the supporting analysis and rationale.'' Question #10 in Exhibit D–80A of EITF Topic D–80 provides guidance as to the analysis to be performed when determining whether a loan that is not individually impaired under SFAS No. 114 should be included in the assessment of the loan loss allowance under SFAS No. 5.

[65] *Ibid.*

[66] *Ibid.*

[67] FFR No. 28 states: ''The specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—*i.e.,* the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure

normally would expect to find documented in loan loss allowance summaries include:[68]

- The estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.,* individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);
- The aggregate probable loss estimated using the registrant's methodology;
- A summary of the current loan loss allowance balance;
- The amount, if any, by which the loan loss allowance balance is to be adjusted;[69] and
- Depending on the level of detail that supports the loan loss allowance analysis, detailed subschedules of loss estimates that reconcile to the summary schedule.

Generally, a registrant's review and approval process for the loan loss allowance relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the loan loss allowance methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (*e.g.,* information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a SFAS No. 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel.[70] Additionally, it would typically be appropriate for the summary to provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, the staff normally would expect management to document the nature of any adjustments and the underlying rationale for making the changes.[71] The staff also normally would expect this documentation to be provided to those among management making the final determination of the loan loss allowance amount.[72]

5.B. Documenting the Results of a Systematic Methodology—Allowance Adjustments

Facts: Registrant I determines its loan loss allowance using an established systematic process. At the end of each reporting period, the accounting department prepares a summary schedule that includes the amount of each of the components of the loan loss allowance, as well as the total loan loss allowance amount, for review by senior management, including the Credit Committee. Members of senior management meet to discuss the loan loss allowance. During these discussions, they identify changes that are required by GAAP to be made to certain of the loan loss allowance estimates. As a result of the adjustments made by senior management, the total amount of the loan loss allowance changes. However, senior management (or its designee) does not update the loan loss allowance summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original loan loss allowance summary schedule reviewed by senior management, as well as a verbal explanation of the changes made by senior management when they met to discuss the loan loss allowance.

Question 13: In the staff's view, are Registrant I's documentation practices related to the balance of its loan loss allowance in compliance with existing documentation guidance in this area?

Interpretive Response: No. A registrant should maintain supporting documentation for the loan loss allowance amount reported in its financial statements.[73] As illustrated above, there may be instances in which loan loss allowance reviewers identify adjustments that need to be made to the loan loss estimates. The staff normally would expect the nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the loan loss allowance balance to be documented.[74] The staff also normally would expect appropriate documentation of the adjustments to be provided to management for review of the final loan loss allowance amount to be reported in the financial statements. This documentation should also be made available to the independent accountants. If changes frequently occur during management or credit committee reviews of the loan loss allowance, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the registrant uses.[75]

6. Validating a Systematic Methodology

Question 14: What is the staff's guidance to a registrant on validating, and documenting the validation of, its systematic methodology used to estimate loan loss allowances?

Interpretive Response: The staff believes that a registrant's loan loss allowance methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the staff normally would expect the registrant's methodology to include procedures that adjust loan loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary. To verify that the loan loss allowance methodology is valid and conforms to GAAP, the staff believes it is appropriate for management to establish internal control policies,[76] appropriate for the size of the registrant and the type and complexity of its loan products. These policies may include procedures for a review, by a party who is independent of the allowance for loan losses estimation process, of the allowance for loan losses methodology and its application in order to confirm its effectiveness.

In practice, registrants employ numerous procedures when validating the reasonableness of their loan loss allowance methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

- A review of trends in loan volume, delinquencies, restructurings, and concentrations.
- A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.
- A review by a party that is independent of the loan loss allowance estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.
- An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

It is the staff's understanding that, in practice, management usually supports the validation process with the workpapers from the loan loss allowance review function. Additional documentation often includes the summary findings of the independent reviewer. The staff normally would expect that, if the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes would be maintained.[77]

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the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods.''

[68] See also paragraph 7.14 of the Audit Guide.

[69] Subsequent to adjustments, the staff normally would expect that there would be no material differences between the consolidated loss estimate, as determined by the methodology, and the final loan loss allowance balance reported in the financial statements. Registrants should refer to SAB No. 99 and Statement on Auditing Standards No. 89, *Audit Adjustments,* and its amendments to AU Section 310.

[70] Paragraph 7.39 in the Audit Guide indicates that effective internal control related to the allowance for loan losses should include ''adequate review and approval of the allowance estimates by the individuals specified in management's written policy.''

[71] See the guidance in paragraph 7.14 of the Audit Guide (''The institution's conclusions about the appropriate amount should be well documented.'') and in FRR No. 28 (''The specific rationale upon which the amount actually reported in each individual period is based* * * would be documented* * *'').

[72] *Ibid.*

[73] *Ibid.*

[74] *Ibid.*

[75] As outlined in paragraph 7.39 of the Audit Guide, effective internal controls related to the allowance for loan losses should include adequate review and approval of allowance estimates, including review of sources of relevant information, review of development of assumptions, review of reasonableness of assumptions and resulting estimates, and consideration of changes in previously established methods to arrive at the allowance.

[76] *Ibid.*

[77] See paragraph 7.39 of the Audit Guide.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–009]

RIN 2115–AE47

Drawbridge Operation Regulation; Massalina Bayou, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The rule allows the draw of the bridge to remain closed to navigation from 9 p.m. until 11 p.m. on July 4 of each year. This rule will facilitate movement of vehicular traffic associated with a fireworks display which is conducted annually on July 4. Presently the draw opens on signal at all times.

DATES: This rule is effective on July 4, 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 CGD08–01–009 and are available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District at the address given above, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 9, 2001, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Massalina Bayou, Florida in **Federal Register** (66 FR 23640). The Coast Guard received no letters in response to the NPRM. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule is required to be implemented in less than 30 days because the event will occur in less than 30 days.

Background and Purpose

The City of Panama City, Florida requested a change in the drawbridge operating regulation, governing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display normally generates. This bridge closure has become an annual event in conjunction with the 4th of July fireworks celebration. The closure is for two hours and does not significantly affect marine traffic. The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

Discussion of Comments and Changes

No comments regarding the temporary deviation or the NPRM were received.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. 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.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 would not have a significant economic impact on a substantial number of small entities. The small entities concerned with this rule are the local commercial fishermen who transit the bridge. This rule will only delay transiting the bridge for two hours on one evening per year.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this so that they can better evaluate its effects on them and participate in the rulemaking. 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 the Bridge Administration Branch, Eighth Coast Guard District at the address above.

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's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This 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 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

The Coast Guard 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.

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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This will change the existing drawbridge operating regulation promulgated by a Coast Guard Bridge Administration Program action. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.301 is added to read as follows:

§ 117.301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, each year, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17413 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK08

Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends VA's medical regulations by establishing provisions for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions. This is necessary to implement provisions of ''The Veterans Millennium Health Care and Benefits Act.''

DATES: *Effective Date:* This interim final rule is effective on May 29, 2000; except for 38 CFR 17.1004 which is effective July 19, 2001.

Comments Dates: Comments on the rule, including comments on the information collection provisions, must be received on or before September 10, 2001; except that comments on the request for emergency approval of the collection of information provisions must be received on or before July 19, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK08.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Chief, Policy & Operations, Health Administration Service (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends VA's medical regulations at 38 CFR part 17. The amendments implement provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These statutory provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish provisions regarding payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment.

Conditions for Reimbursement or Payment for Emergency Services

Sections 17.1002 and 17.1003 set forth substantive conditions that must be met for payment or reimbursement for emergency services under 38 U.S.C. 1725. In general, these conditions consist of restatements and interpretations of 38 U.S.C. 1725.

For emergency services other than emergency transportation, we will make payment or reimbursement only for emergency services provided in a hospital emergency department or a similar facility held out as providing emergency care to the public. These are the places that have the capabilities for providing emergency care.

48-Hour Notice

For informational purposes, we have added a note explaining that health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment under 38 U.S.C. 1725 should contact VA within 48 hours after the veteran begins receiving emergency treatment. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the conditions for payment. The contact may also assist the provider in planning for transfer of the veteran after stabilization.

Claims

Section 17.1004 sets forth procedures for filing claims. To initiate a claim for emergency treatment a claimant would be required to submit to the VA medical facility of jurisdiction (defined as the nearest VA medical facility to where the emergency service was provided) a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement by the individual or entity claiming the benefit declaring that ''I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware that 38 U.S.C. 6102(b) provides that one

who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both.''

We believe that this (along with the right to obtain additional information under 17.1004(e)) will be sufficient to make determinations regarding whether the claimant meets the requirements for reimbursement or payment. Claims for payment or reimbursement for ambulance services, including air ambulance services, will not be required to be on a specific form but will be required to include the bill and contain information to establish entitlement to payment or reimbursement for such services.

Consistent with statutory authority in 38 U.S.C. 1725, a claimant must be the entity that furnished the treatment, the veteran who paid for the treatment, or the person or organization that paid for such treatment on behalf of the veteran.

The rule establishes time limits for filing claims and establishes procedures and time limits for the submission of additional information needed by VA to make determinations regarding the claim. This is designed to help ensure that claims are decided in reasonable periods of time.

Also, we note that a claim that is submitted to a VA entity other than the VA medical facility of jurisdiction will be forwarded by the receiving VA entity to the VA medical facility of jurisdiction.

Payment Limitations

The provisions of 38 U.S.C. 1725 state that VA may not pay more than the amount for which the veteran is personally liable. Within this framework, the rule establishes reimbursement or payment rates as the lesser of the amount for which the veteran is personally liable or 70 percent of the amount prescribed under Medicare fee schedules.

Under 38 U.S.C. 1725, VA is authorized for the first time to establish for non-VA providers of emergency treatment a mechanism for obtaining payment for care furnished to veterans who have no health care insurance or other source of payment in whole or in part. Prior to the enactment of this new law, these providers frequently were forced to absorb the costs of this care and pass those costs on to all other paying users of their facilities. With respect to the Congressional intent in authorizing VA to pay or reimburse for emergency treatment, House Report No. 106–237, at pages 39–40, states:

> It is the Committee's view that in setting such payment regulations VA should avoid a policy which gives providers of emergency care a windfall. In that connection, the Committee takes notice of the frequency with which providers of emergency care ''write off'' such debts in cases where the debt is deemed uncollectible or the costs of collection exceed the likely recovery. VA serves a population which is substantially elderly, indigent, and chronically ill. Given that this bill covers a subset of this population which has no private or public medical insurance or coverage, it stands to reason that in most instances under current law providers would write off the debts arising from the provision of emergency care to these veterans. The Committee thus envisions that VA would establish regulations that are significantly below those paid under the Medicare or Medicaid system (or under 38 United States Code, section 1728). Such lower rates should also provide a significant incentive to the providers of care to actively try and obtain reimbursement from those other benefit programs before seeking reimbursement from VA. As a further incentive to the providers of care, the bill also provides that they must accept VA's payment as payment in full.

In accordance with the declared intent of Congress, we will pay or reimburse at a rate discounted from the amounts Medicare pays. Bearing in mind the words in the House report suggesting that VA establish rates ''significantly below'' Medicare or Medicaid rates, VA has established the rate at 70 percent.

Consistent with the provisions of 38 U.S.C. 1725, the rule also states that payment or reimbursement for medical treatment may be made only for the period from the beginning of the treatment until such time as the veteran has ''stabilized'' and could be transferred safely to a VA facility or other Federal facility.

The rule restates statutory provisions that a provider who accepts VA payment for emergency treatment agrees thereby to extinguish all liability on the part of the veteran for that treatment.

Delegations of Authority

Decisions under this rule regarding benefit determinations will be made by Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction, except that the Fee Service Review Physician or equivalent officer at the VA medical facility of jurisdiction would make determinations regarding § 17.1002(b), (c), and (d). We believe that these are the appropriate individuals to make the determinations assigned. Further, under the rule any decision denying a benefit must be in writing and inform the claimant of VA reconsideration rights and rights of appeal to the Board of Veterans' Appeals.

Independent Right of Recovery

The rule also restates statutory provisions that give the Government an independent right of recovery when any payment is made for the same emergency treatment for which VA had already reimbursed or made payment (this includes statutory liens). The statutory provisions require the veteran or claimant to notify VA and submit documentation regarding the duplicate payment. The rule states that the notification and submission of documentation must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment. This will help VA take timely action to recover the amount owed the Government.

Consistent with statutory authority, the rule states that the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made to a veteran upon determining that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States.

Retroactive Payments

Because May 29, 2000, is the effective date of 38 U.S.C. 1725, we would make retroactive payments or reimbursements, as appropriate, for qualifying emergency care furnished on or after that date.

Paperwork Reduction Act

The provisions of 38 CFR 17.1004 contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by July 19, 2001. If OMB does not approve the collections of information as requested, we will immediately remove § 17.1004 or take such other action as is directed by OMB.

The provisions of 38 CFR 17.1007 and 17.1008 contain collections of information concerning prompt notification of duplicate payments and rejection of VA payments. We expect that fewer than 10 collections of information will occur under any of these provisions in any given year. If VA expects to receive 10 or more collections under any of these provisions in any year, we will seek approval under the

Paperwork Reduction Act for such collections of information.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are requesting comments on the collection of information provisions contained in § 17.1004. Comments must be submitted by September 10, 2001.

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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.

Comments on the collections of information in § 17.1004 should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AK08.''

Title: Application for Reimbursement/Payment for Emergency Treatment in Non-VA Facilities.

Summary of collection of information: Under the provisions of 38 CFR 17.1004, to obtain payment or reimbursement for emergency treatment under 38 U.S.C. 1725, a claimant must submit to the VA medical facility of jurisdiction a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement declaring that ''I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware that 38 U.S.C. 6102(b) provides that one who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both.''

In addition, § 17.1004 provides that aclaim for payment or reimbursement for emergency transportation does not have to be on a form. The claimant need only submit a signed and dated request for such payment or reimbursement to the VA medical facility of jurisdiction, together with a bill showing the services provided and charges for which the veteran is personally liable and a signed statement explaining who requested such transportation services and why they were necessary.

Description of the need for information and proposed use of information: This information would be needed for VA to decide claims for reimbursement or payment from a veteran, a hospital or other entity that furnished non-VA emergency treatment or transportation to the veteran, or a person or organization that paid for such treatment or transportation on behalf of the veteran. VA would use the information and certifications submitted to process claims for such reimbursement or payment.

Description of likely respondents: Hospital or other entities that furnished the treatment or transportation, the veteran who paid for the treatment or transportation, or the person or organization that paid for such treatment or transportation on behalf of the veteran.

Estimated number of respondents: 241,457.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 120,729 hours.

Estimated annual burden per collection: 30 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

Administrative Procedure Act and Congressional Review Act

We have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) and the notice and public procedure provisions of the Congressional Review Act (5 U.S.C. 801–808) because compliance with such provisions would be contrary to the public interest. Under the provisions of section 111 of Public Law 106–117, VA was mandated to establish regulations to provide a mechanism for payment or reimbursement for certain non-VA emergency services furnished to veterans for non-service connected conditions. These regulations were to be effective by May 29, 2000. We are aware that because implementing regulations have not become effective, in a number of instances bills for veterans' emergency care that would be covered by this rule have been turned over to collection agencies. This has unnecessarily placed veterans' possessions in jeopardy. Even though we are making § 17.1004 effective immediately, we are soliciting comments for 60 days after publication of the document. We will publish a final document after the comment period ends and we may modify this rule in response to comments.

Compliance With the Congressional Review Act and Executive Order 12866—Cost-Benefit Analysis

This rule is necessary to implement the provisions of section 111 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1725, authorize VA to establish a mechanism for payment of or reimbursement for the reasonable value of non-VA emergency services provided for nonservice-connected conditions of certain veterans who have no medical insurance and no other recourse for payment. This rule would directly impact these veterans positively by avoiding full recourse or payment responsibility for medical care and resulting potential debt collection repercussions. This rule implements a detailed statutory mandate, and we found no potentially effective and reasonably feasible alternatives.

We estimate that the five-year cost of this rule from appropriated funds would be $2.1 billion in benefits costs and $21 million in government operating expenses. Since it is likely that the adoption of the rule may have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to the Congressional Review Act and Executive Order 12866.

I. Benefits Costs

The estimated cost for implementation of the emergency care

provisions of the Millennium Act are based on enrollment projections developed by a private actuarial firm and contained in the FY 2001 Enrollment Level Decision Analysis. This baseline population was adjusted, using a survey of enrollees and existing enrollment databases, to calculate the projected number of veterans who had no private or public insurance and who had used VA care within the previous 24 months. These adjustments reflect the criteria contained in the Millennium Act.

Private sector ER-related health care utilization was adjusted to reflect veteran enrollee demographics and relative morbidity, as well as uninsured enrollee reliance on the VA health care system. These utilization estimates, along with Medicare allowable charge levels, were applied to the estimated 990,000 veteran enrollees affected by the emergency care provisions. This resulted in projected estimates for emergency room visits ($93,480,145), ambulance use ($34,108,803), and ER-related inpatient care ($468,221,072). The total of $595,810,019 was then multiplied by the 70 percent reimbursement rate VA will use to pay emergency care providers. This comes to $417,067,014.

This total, however, reflects full implementation of the emergency care provisions. VA believes that it will take time before both providers and eligible veterans are aware of these new benefits and begin to submit acceptable bills to VA for reimbursement. Current experience shows that without widespread dissemination of information, there is limited use of these benefits. VA believes that with the publication of final regulations the submission of claims will increase significantly and could reach 50 percent of the full implementation costs in the first full year after the rule is in effect. Only experience will demonstrate the real demand for this new benefit.

II. Administrative Costs

The administrative workload caused by this rule is expected to be 241,457 claims filed in 2001. Administrative workloads assume that not all claims would be granted; it is probable that non-VA related claims will be received from veterans who are not eligible. Medical Care costs are computed on the average cost of a GS4/5 @ $12/hour × 30 minutes × 241,457 claims/60 which equals $1,448,742.00. In addition, the clinical review costs are estimated at $46/hour × 15 minutes × 241,457 claims/60 which equals $2,776,755.00 for total Medical Care costs of $4,225,497.

OMB Review

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would apply only to an extremely small amount of the business of a hospital or health care provider. Otherwise, the rule would only apply to individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 64.005, 64.007.64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. An undesignated center heading and §§ 17.1000 through 17.1008 are added to read as follows:

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

Sec.

17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.
17.1001 Definitions.
17.1002 Substantive conditions for payment or reimbursement.
17.1003 Emergency transportation.
17.1004 Filing claims.
17.1005 Payment limitations.
17.1006 Decisionmakers.
17.1007 Independent right of recovery.
17.1008 Balance billing prohibited.

Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-VA Facilities

§ 17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.

Sections 17.1000 through 17.1008 constitute the requirements under 38 U.S.C. 1725 that govern VA payment or reimbursement for non-VA emergency services furnished to a veteran for nonservice-connected conditions.

(Authority: 38 U.S.C. 1725)

Note to § 17.1000: Health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment under 38 U.S.C. 1725 should contact VA within 48-hours after the veteran begins receiving emergency treatment. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the conditions for payment. The contact may also assist the provider in planning for transfer of the veteran after stabilization.

§ 17.1001 Definitions.

For purposes of §§ 17.1000 through 17.1008:

(a) The term *health-plan contract* means any of the following:

(1) An insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement under which health services for individuals are provided or the expenses of such services are paid;

(2) An insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

(3) A State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*);

(4) A workers' compensation law or plan described in section 38 U.S.C. 1729(a)(2)(A); or

(5) A law of a State or political subdivision described in 38 U.S.C. 1729(a)(2)(B) (concerning motor vehicle accidents).

(b) The term *third party* means any of the following:

(1) A Federal entity;

(2) A State or political subdivision of a State;

(3) An employer or an employer's insurance carrier;

(4) An automobile accident reparations insurance carrier; or

(5) A person or entity obligated to provide, or to pay the expenses of, health services under a health-plan contract.

(c) The term *duplicate payment* means payment made, in whole or in part, for the same emergency services for which VA reimbursed or made payment.

(d) The term *stabilized* means that no material deterioration of the emergency medical condition is likely, within reasonable medical probability, to occur if the veteran is discharged or transferred to a VA or other Federal facility.

(e) The term *VA medical facility of jurisdiction* means the nearest VA medical facility to where the emergency service was provided.

(Authority: 38 U.S.C. 1725)

§ 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency services may be made only if all of the following conditions are met:

(a) The emergency services were provided in a hospital emergency department or a similar facility held out as providing emergency care to the public;

(b) The claim for payment or reimbursement for the initial evaluation and treatment is for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part);

(c) A VA or other Federal facility/provider was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined that the nearest available appropriate level of care was at a non-VA medical center);

(d) The claim for payment or reimbursement for any medical care beyond the initial emergency evaluation and treatment is for a continued medical emergency of such a nature that the veteran could not have been safely transferred to a VA or other Federal facility (the medical emergency lasts only until the time the veteran becomes stabilized);

(e) At the time the emergency treatment was furnished, the veteran was enrolled in the VA health care system and had received medical services under authority of 38 U.S.C. chapter 17 within the 24-month period preceding the furnishing of such emergency treatment;

(f) The veteran is financially liable to the provider of emergency treatment for that treatment;

(g) The veteran has no coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment (this condition cannot be met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract, e.g., failure to submit a bill or medical records within specified time limits, or failure to exhaust appeals of the denial of payment);

(h) If the condition for which the emergency treatment was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider; and

(i) The veteran is not eligible for reimbursement under 38 U.S.C. 1728 for the emergency treatment provided (38 U.S.C. 1728 authorizes VA payment or reimbursement for emergency treatment to a limited group of veterans, primarily those who receive emergency treatment for a service-connected disability).

(Authority: 38 U.S.C. 1725)

§ 17.1003 Emergency transportation.

Notwithstanding the provisions of § 17.1002, payment or reimbursement under 38 U.S.C. 1725 for ambulance services, including air ambulance services, may be made for transporting a veteran to a facility only if the following conditions are met:

(a) Payment or reimbursement is authorized under 38 U.S.C. 1725 for emergency treatment provided at such facility (or payment or reimbursement could have been authorized under 38 U.S.C. 1725 for emergency treatment if death had not occurred before emergency treatment could be provided);

(b) The veteran is financially liable to the provider of the emergency transportation;

(c) The veteran has no coverage under a health-plan contract for reimbursement or payment, in whole or in part, for the emergency transportation or any emergency treatment authorized under 38 U.S.C. 1728 (this condition is not met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract); and

(d) If the condition for which the emergency transportation was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such transportation; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider.

(Authority: 38 U.S.C. 1725)

§ 17.1004 Filing claims.

(a) A claimant for payment or reimbursement under 38 U.S.C. 1725 must be the entity that furnished the treatment, the veteran who paid for the treatment, or the person or organization that paid for such treatment on behalf of the veteran.

(b) To obtain payment or reimbursement for emergency treatment under 38 U.S.C. 1725, a claimant must submit to the VA medical facility of jurisdiction a completed standard billing form (such as a UB92 or a HCFA 1500). The completed form must also be accompanied by a signed, written statement declaring that "I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 and 17.1003. I am aware

that 38 U.S.C. 6102(b) provides that one who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both.''

Note to § 17.1004(b): These regulations regarding payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities also can be found on the internet at *http://www.va.gov/health/elig.*

(c) Notwithstanding the provisions of paragraph (b) of this section, no specific form is required for a claimant (or duly authorized representative) to claim payment or reimbursement for emergency transportation charges under 38 U.S.C. 1725. The claimant need only submit a signed and dated request for such payment or reimbursement to the VA medical facility of jurisdiction, together with a bill showing the services provided and charges for which the veteran is personally liable and a signed statement explaining who requested such transportation services and why they were necessary.

(d) To receive payment or reimbursement for emergency services, a claimant must file a claim within 90 days after the latest of the following:

(1) July 19, 2001.

(2) The date that the veteran was discharged from the facility that furnished the emergency treatment;

(3) The date of death, but only if the death occurred during transportation to a facility for emergency treatment or if the death occurred during the stay in the facility that included the provision of the emergency treatment; or

(4) The date the veteran finally exhausted, without success, action to obtain payment or reimbursement for the treatment from a third party.

(e) If after reviewing a claim the decisionmaker determines that additional information is needed to make a determination regarding the claim, such official will contact the claimant in writing and request additional information. The additional information must be submitted to the decisionmaker within 30 days of receipt of the request or the claim will be treated as abandoned, except that if the claimant within the 30-day period requests in writing additional time, the time period for submission of the information may be extended as reasonably necessary for the requested information to be obtained.

(Authority: 38 U.S.C. 1725)

§ 17.1005 Payment limitations.

(a) Payment or reimbursement for emergency treatment under 38 U.S.C. 1725 shall be the lesser of the amount for which the veteran is personally liable or 70 percent of the amount under the applicable Medicare fee schedule for such treatment.

(b) Reimbursement or payment for emergency treatment may be made only for the period from the beginning of the treatment until such time as the veteran could be transferred safely to a VA facility or other Federal facility. For purposes of payment or reimbursement under 38 U.S.C. 1725, VA deems it safe for the veteran to be transferred once the veteran has become stabilized.

(Authority: 38 U.S.C. 1725)

§ 17.1006 Decisionmakers.

The Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction will make all determinations regarding payment or reimbursement under 38 U.S.C. 1725, except that the Fee Service Review Physician or equivalent officer at the VA medical facility of jurisdiction will make determinations regarding § 17.1002(b), (c), and (d). Any decision denying a benefit must be in writing and inform the claimant of VA reconsideration and appeal rights.

(Authority: 38 U.S.C. 1725)

§ 17.1007 Independent right of recovery.

(a) VA has the right to recover its payment under this section when, and to the extent that, a third party makes payment for all or part of the same emergency treatment for which VA reimbursed or made payment under this section.

(1) Under 38 U.S.C. 1725(d)(4), the veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran. The veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall immediately forward all documents relating to such payment, cooperate with the Secretary in the investigation of such payment and assist the Secretary in enforcing the United States' right to recover any payment made and accepted under this section. The required notification and submission of documentation must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment.

(2) If the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction concludes that payment from a third party was made for all or part of the same emergency treatment for which VA reimbursed or made payment under this section, such VA official shall, except as provided in paragraph (c) of this section, initiate action to collect or recover the amount of the duplicate payment in the same manner as for any other debt owed the United States.

(b)(1) Any amount paid by the United States to the veteran (or the veteran's personal representative, successor, dependents, or survivors) or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

(2) Any amount paid by the United States, and accepted by the provider that furnished the veteran's emergency treatment, shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

(c) If it is determined that a duplicate payment was made, the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made under this section to a veteran upon determining that the veteran has substantially complied with the provisions of paragraph (a)(1) of this section and that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States.

(Authority: 38 U.S.C. 1725)

§ 17.1008 Balance billing prohibited.

Payment by VA under 38 U.S.C. 1725 on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish all liability on the part of the veteran for that emergency treatment. Neither the absence of a contract or agreement between VA and the provider nor any provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement.

(Authority: 38 U.S.C. 1725)

[FR Doc. 01–17102 Filed 7–11–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7010–3]

RIN A2060–AJ51

Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996 and Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendment.

SUMMARY: We are amending the standards of performance for large municipal waste combustors by expanding the definition of mass burn rotary waterwall municipal waste combustors (MWC) to include mass burn tumbling-tile grate waterwall municipal waste combustors. This change ensures that the same emission limit is established for both types of MWC designs since they exhibit similar combustion characteristics. Since the emissions guidelines for large municipal waste combustors reference the definitions included in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

DATES: This direct final rule will be effective on September 10, 2001, without further notice, unless significant adverse comments are received by August 13, 2001.

If significant material adverse comments are received by August 13, 2001, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposal. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on September 10, 2001.

ADDRESSES: By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5251, e-mail: porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–90–45, Subcategory IX–D.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page http://www.epa.gov/ttn/caaa. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS Codes	SIC Codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are 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 criteria in §§ 60.50b and 60.32b of the rules. 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the action taken by this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 10, 2001. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or

public hearing may be raised during judicial review.

I. Background

On December 19, 1995, we promulgated standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) for large municipal waste combustors. These standards and guidelines establish maximum achievable control technology (MACT) emission limits for nine pollutants for all design types of municipal waste combustors. The emission control technology upon which these MACT emission limits are based varies somewhat, depending on the specific emission limit. For carbon monoxide (CO), the emission control technology upon which the MACT emission limits are based is good combustion. As outlined in the proposed and final standards and guidelines, good combustion consists of several elements: trained operators, waste feed control, combustion air control, combustion air preheat, and the use of auxiliary fuel burners.

The magnitude of CO emissions from a combustor are determined primarily by the combustion conditions which exist within the combustor. While good combustion minimizes CO emissions, it cannot achieve the same level of emission reductions for each type of combustor design since combustion conditions inherently vary from one type of combustor design to another. As a result, the MACT CO emission limits in the standards and guidelines vary by type of combustor design.

The MACT CO emission limits for mass burn rotary waterwall combustors, for example, are different (i.e., less stringent) than those for mass burn waterwall combustors. A mass burn rotary waterwall combustor is essentially an inclined rotating waterwall cylinder. Waste enters at the elevated end of the cylinder, ignites, and then slowly moves down the cylinder as it rotates. As the municipal waste burns, the rotation of the cylinder tends to carry the waste partially up the wall in the direction of rotation, until it tumbles and falls over on itself. When this happens, a large amount of fresh, unburned surface area is suddenly exposed to combustion, and this leads to substantial fluctuations in CO emission levels.

Most mass burn waterwall municipal waste combustors do not use an inclined rotating cylinder, but use an inclined reciprocating grate to burn the municipal waste. Viewed from the side, this inclined grate looks like a long set of stair steps. In most cases, every other grate step can move back and forth or reciprocate. The waste enters on the top step, ignites, and then is slowly pushed down the grate, from one step to another, by the reciprocating steps. While the action of moving from step to step serves to expose some fresh, unburned surface area to combustion, the transition is smoother and less abrupt than that in a rotary combustor. As a result, the fluctuations in CO emission levels are less extreme and, as mentioned above, the MACT emission limits in the standards and guidelines for CO are more stringent for mass burn waterwall combustors than for mass burn rotary waterwall combustors.

Recently, we have learned that there is one other type of mass burn waterwall municipal waste combustor design, which is referred to as a tumbling-tile grate combustor. Only one large municipal waste combustor of this type of design exists in the United States (i.e., Savannah Energy Systems located in Savannah, Georgia) and, until the owner/operator of this combustor brought this to our attention, we were not aware of it. This type of combustor design uses a grate to burn municipal waste but, because of the unique design of the grate, the combustion conditions within the combustor are similar to those within a mass burn rotary waterwall combustor.

When viewed from the side, the grate within this combustor looks like a long set of stair steps. However, every third step, which is referred to as a ''tumbling-tile,'' is hinged at one end with the other end attached to a vertical ram beneath the step. As waste moves down the grate, the ram rises, rotating the step around the hinged end. This action causes the waste to tumble and fall over on itself exposing a large amount of fresh, unburned surface area to combustion.

The overall effect creates combustion conditions similar to those which exist within a rotating combustor. As the waste burns, periodically a large amount of fresh, unburned surface area is suddenly and abruptly exposed to combustion, and this leads to substantial fluctuations in CO emission levels. Good combustion reduces CO emission levels from a tumbling-tile grate waterwall combustor to the level achieved at rotary waterwall combustors, but cannot reduce CO emissions to the level achieved at mass burn waterwall combustors. Thus, the MACT emission limits for CO for mass burn tumbling-tile grate waterwall combustors and mass burn rotary waterwall combustors should be the same.

This direct final rule amendment, therefore, expands the definition of mass burn rotary waterwall municipal waste combustor to include mass burn tumbling-tile grate waterwall municipal waste combustor. This action ensures that the same MACT CO emission limit is established for both types of municipal waste combustor designs since they exhibit similar combustion conditions.

All terms used but not defined in the guidelines (Subpart Cb—Emission Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994) have the meaning given them in the standards (Subpart Eb—Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996). As a result, this action has the effect of amending both the standards and the guidelines by amending the definition of mass burn rotary waterwall municipal waste combustor in the standards.

II. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we 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. The Executive 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.

It has been determined that this direct final rule does not qualify as a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to review by OMB.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct 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, the requirements of section 6 of the Executive Order do not apply to this direct final rule.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this direct final rule.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Also, this direct final rule is not ''economically significant.''

E. Unfunded Mandates Reform Act of 1995

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 1 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 objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. 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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

G. Paperwork Reduction Act

The Office of Management and Budget had previously approved the information collection requirements contained in the standards and guidelines for large municipal waste combustors under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the rules were promulgated on December 19, 1995.

The amendment contained in this direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the standards and guidelines. Therefore, the information collection requests have not been revised.

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 40 CFR chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This direct final rule amendment does not involve technical standards. The EPA's compliance with the NTTAA has been addressed in the preamble of the standards of performance (60 FR 65382) and emissions guidelines (60 FR 65387) promulgated on December 19, 1995.

I. Congressional Review Act

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as:

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

Subpart Eb—[Amended]

2. Section 60.51b is amended by revising the definition of *Mass burn rotary waterwall municipal waste combustor* and adding the definition of *Tumbling-tile* as follows:

§ 60.51b Definitions.

* * * * *

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary waterwall furnace or on a tumbling-tile grate.

* * * * *

Tumbling-tile means a grate tile hinged at one end and attached to a ram at the other end. When the ram extends, the grate tile rotates around the hinged end.

* * * * *

[FR Doc. 01–17330 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket#: AK–01–002; FRL–7010–6]

Finding of Attainment for Carbon Monoxide (CO); Anchorage CO Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO by the deadline required by the Clean Air Act (CAA), December 31, 2000.

EFFECTIVE DATE: August 13, 2001.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, Office of Air Quality Mail Code OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document wherever''we'', ''us'', or ''our'' is used we mean EPA.

I. Background

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. In this case the EPA was required to make determinations concerning whether serious CO nonattainment areas attained the NAAQS by their December 31, 2000, attainment date. Pursuant to the CAA, the EPA is required to make attainment determinations for these areas by June 30, 2001, no later than six months following the attainment date for the areas. This proposal was based on all available, quality-assured data collected from the CO monitoring sites, which has been entered into the Aerometric Information Retrieval System (AIRS). This data was reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50.8, and in accordance with EPA policy and guidance as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' dated June 18, 1990.

On May 25, 2001 (66 FR 28872), EPA proposed to find that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for CO as of December 31, 2000. A detailed discussion of EPA's proposal is contained in the May 25, 2001, proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments

We received no comments in response to EPA's proposed action to find that the Anchorage CO nonattainment area in Alaska has attained the National Ambient Air Quality Standards (NAAQS) for carbon monoxide as of December 31, 2000.

III. Attainment Finding

EPA has determined that the Anchorage serious CO nonattainment area has attained the CO NAAQS by the attainment date of December 31, 2000. Consistent with CAA section 188, the area will remain a serious CO nonattainment area with the additional planning requirements that apply to serious CO nonattainment areas. This finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Alaska has not submitted a maintenance plan as required under section 175A(a) of the CAA or met the other CAA requirements for redesignation to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Anchorage CO nonattainment area until such time as EPA finds that Alaska has met the CAA requirements for redesignation to attainment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves makes a determination based on air quality data, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective August 13, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, National parks, Reporting and record keeping requirements, Wilderness areas.

Dated: June 29, 2001.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01–17412 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301144; FRL–6788–7]

RIN 2070–AB78

Aminoethoxyvinylglycine; Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary tolerance of 0.170 part per million (ppm) for residues of aminoethoxyvinylglycine (AVG) in or on the stone fruit crop group when applied/used as a plant regulator. Valent BioSciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting the temporary tolerance. The temporary tolerance will expire on December 21, 2003.

DATES: This regulation is effective June 25, 2001. Objections and requests for hearings, identified by docket control number OPP–301144, must be received by EPA on or before September 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit V. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301144 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; and e-mail address: greenway.denise@epa.gov.

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 32532	Crop production Animal production Food manufacturing 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301144. The official record consists of the documents specifically referenced in this action, 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.

II. Background and Statutory Findings

In the**Federal Register** of March 28, 2001 (66 FR 16931) (FRL–6775–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 9G5048, transferred from Abbott Laboratories) by Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL 60048. This notice included a summary of the petition prepared by the petitioner Valent BioSciences Corporation. There were no comments received in response to the notice of filing.

New data summarized by Valent BioSciences Corporation were from a rat 2-generation reproduction study. The study was a condition of registration of the subject active ingredient, and was submitted to the Agency by Abbott Laboratories on September 27, 1999.

The petition requested that 40 CFR 180.502 be amended by extending the temporary tolerance for residues of the biochemical pesticide aminoethoxyvinylglycine (AVG) in or on food commodities of the stone fruit crop group 12, including apricot, cherry (sweet and tart), nectarine, peach, plum, chickasaw plum, damson plum, Japanese plum, plumcot, and prune (fresh) at 0.170 part per million (ppm). Instead, the Agency is establishing a temporary tolerance for which the tolerance will expire on December 21, 2003.

Under section 408(g)(1) of the FFDCA, a regulation issued under subsection (d)(4) shall take effect upon publication unless the regulation specifies otherwise. In this case, the temporary tolerance will be effective on June 25, 2001.

This pesticide is only applied once during the growing season, and this must be done 7-14 days prior to the beginning of the harvest period. The harvest season for certain stone fruits is very early in the year. Many of the tests sites for these stone fruits are located in the Southern region of the United States. Thus, in order to provide for the sale and distribution of certain stone fruit produce with residues of this pesticide in 2001, and to optimize the benefits of the experimental use of the pesticide, approval of the use was necessary in the Spring of this year. Furthermore, the Agency has provided notice and comment for this rulemaking action and no comments were received. The Agency is also providing a 60-day period to file objections to this final rule as required by section 408(g)(2) of the FFDCA. See Unit V. of this preamble for further information. Thus, further notice and public procedure are unnecessary. The Agency finds that this constitutes good cause to provide for an immediate effective date pursuant to 5 U.S.C. 808(2).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the **Federal Register** of June 10, 1999 (64 FR 31124) (FRL–6080–4), EPA issued a final rule pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) establishing a temporary tolerance level of 0.170 ppm for residues of aminoethoxyvinylglycine (AVG) in or on food commodities of the stone fruit crop group (40 CFR 180.502). This final rule included a summary of the Agency's assessment of the health effects data submitted in support of the establishment of the temporary numeric tolerance. This rule also announced that, in considering the sensitivity of infants and children, the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a rat 2-generation reproduction study was completed. The temporary tolerance expired on April 1, 2001.

Summaries of the toxicological profile and other relevant health effects data, to comply with the requirements of the FFDCA, as amended by the FQPA of 1996, were reported in the **Federal Register** of June 10, 1999, in a final rule document establishing the temporary tolerance. Although the Agency has not completed its assessment of the rat 2-generation reproduction study, based on the previously submitted data outlined in the June 10, 1999, **Federal Register** final rule, and based on the same rationale included therein, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to aminoethoxyvinylglycine from the current experimental use program. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

Therefore, the temporary tolerance, to expire December 21, 2003, is established for residues of aminoethoxyvinylglycine in or on food commodities of the stone fruit crop group at 0.170 ppm.

IV. Other Considerations

A. Analytical Method(s)

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated. Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

B. Codex Maximum Residue Level

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301144 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 10, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–

5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301144, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Regulatory Assessment Requirements

This final rule establishes a temporary tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the temporary tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 rule 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.

VII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.502 is amended by revising the entry for ''Stone fruit crop group'' in the table to paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/Revocation Date
* *	* *	*
Stone fruit crop group	0.170	12/21/03

* * * * *

[FR Doc. 01–17473 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301147; FRL–6790–7]

RIN 2070–[AB78]

Aminoethoxyvinylglycine (AVG); Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances of 0.08 part per million (ppm) for residues of aminoethoxyvinylglycine (AVG), in or on apples and pears. Valent BioSciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire on December 21, 2003.

DATES: This regulation is effective July 12, 2001. Objections and requests for hearings, identified by docket control number OPP–301147, must be received by EPA on or before September 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301147 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8263; and e-mail address: greenway.denise@epa.gov.

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 32532	Crop production Animal production Food manufacturing 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–301147. The official record consists of the documents specifically referenced in this action, 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, (CM #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.

II. Background and Statutory Findings

In the **Federal Register** of March 28, 2001 (66 FR 16931) (FRL–6775–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 6F4632, transferred from Abbott Laboratories) for tolerances by Valent BioSciences Corporation, 870 Technology Way, Suite 100,

Libertyville, IL 60048. This notice included a summary of the petition prepared by Valent BioSciences Corporation, the registrant. There were no comments received in response to the notice of filing.

New data summarized by Valent BioSciences Corporation in that petition were a rat 2-generation reproduction study. The study was a condition of registration of the subject active ingredient, and was submitted to the Agency by Abbott Laboratories on September 27, 1999. Other new data also summarized in the March 28, 2001 notice were internationally-generated residue data in apples, submitted by Valent BioSciences Corporation on May 23, 2000.

Subsequent to the March 28, 2001 notice, the Agency received from Valent BioSciences Corporation a substantial number of supplementary data in support of aminoethoxyvinylglycine. These new data have been placed in the public docket. OPP–301147.

The petition requested that 40 CFR 180.502 be amended by establishing permanent tolerances for the biochemical pesticide aminoethoxyvinylglycine, in or on apples and pears at 0.08 part per million (ppm). Instead, because the Agency has not completed its assessment of the conditional rat 2–generation reproduction study, the Agency is establishing time-limited tolerances for which the tolerances will expire on December 21, 2003.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for apples and pears at 0.08 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

Toxicological Profile

EPA has previously evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5), EPA established time-limited tolerances for residues of the plant regulator aminoethoxyvinylglycine (AVG) in or on the food commodities apples and pears at 0.08 ppm. This final rule included a summary of the Agency's assessment of the health effects data submitted in support of the establishment of the time-limited tolerances. This rule also announced that, in considering the sensitivity of infants and children, the thousand-fold safety factor includes an additional uncertainty factor of 10 for incompleteness of data until a rat 2–generation reproduction study was completed. A correction to this rule was published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5751–5), which announced the correction of the reference dose (RfD) appearing on page 24836, column three, third full paragraph, line 11, from ''0.0002'' to ''0.002.'' This correction did not affect the tolerance levels. The time limited tolerances expired on April 1, 2001.

Summaries of the toxicological profile and other relevant health effects data, to comply with the requirements of the FFDCA, as amended by the FQPA of 1996, were reported in the **Federal Register** publication of the final rule of May 7, 1997, establishing the time-limited tolerances. Although the Agency has not completed its assessment of the rat 2–generation reproduction study, based on the previously submitted data outlined in the May 7, 1997, **Federal Register** final rule, and based on the same rationale included therein, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to aminoethoxyvinylglycine. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

IV. Other Considerations

A. Analytical Enforcement Methodology

The submitted analytical method, High Performance Liquid Chromatography (HPLC)/Fluorescence detector, is acceptable; it is also verified and validated.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

B. International Residue Limits

There are no Codex Alimentarius Commission (CODEX) Maximum Residue Levels (MRLs) for residues of aminoethoxyvinylglycine on apples or pears, or on any other crops.

V. Conclusion

A data gap currently exists for a rat 2–generation reproduction study, because the Agency has not concluded its assessment of the data, which were submitted by Abbott Laboratories on September 27, 1999. All tolerances are time-limited because of this data gap. The Agency also has not completed its assessment of the new internationally-generated apple residue data, which were submitted by Valent BioSciences Corporation on May 23, 2000, and, the supplementary data received after the publication of the March 28, 2001, notice. The time limitation allows for review of the data. Based on the available toxicological data, the thousandfold uncertainty factor, and the levels of exposure, the EPA has determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the pesticide (AVG) and its residues during the period of the time-limited tolerances.

Based on the information and rationale cited in the final rule of May 7, 1999, the Agency has determined that the establishment of the time-limited tolerances by amending 40 CFR 180.502 will be safe; therefore the time-limited tolerances are established for apples and pears at 0.08 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301147 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 10, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301147, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 rule 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.''

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.502 is amended by revising the Expiration/revocation date for the commodities Apples and Pears in the table in paragraph (a) to read as follows:

§ 180.502 Aminoethoxyvinylglycine; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/revocation date
Apples	0.08	12/21/03
Pears	0.08	12/21/03
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[FR Doc. 01–17472 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG 1999–6098]

RIN 2115–AF91

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the rates for pilotage on the Great Lakes. The new rates rest on an independent audit of expenses, results of the 1999 rate review, comments received in response to a Notice and a Supplemental Notice of Proposed Rulemaking, and a public meeting held in Coast Guard Headquarters on October 12, 2000. On these basis, the rates for such services increase an average of 3%, with consequent effects on the incomes of pilots.

DATES: This rule is effective August 13, 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 USCG 1999–6098 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 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 final rule, call Tom Lawler, Chief Economist, Office of Great Lakes Pilotage, Commandant (G-MW–1), U.S. Coast Guard, at 202–267–1241, by facsimile 202–267–4700, or by email at *tlawler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard is required by 46 CFR 404.1(b) to conduct an annual review of rates for pilotage in the Great Lakes. On the basis of this review the Director can adjust them or not.

Regulatory History

On May 9, 1996, the Department of Transportation published in the **Federal Register** [61 FR 21081] a final rule, explaining the methodology used to set the rates for pilotage on the Great Lakes.

On April 14, 2000, the Coast Guard published in the **Federal Register** [65 FR 20110] a Notice of Proposed Rulemaking (NPRM), announcing the results of the 1999 rate review and seeking comments. We received seven letters commenting on the proposed rule.

On September 13, 2000, in response to comments on the NPRM, the Coast Guard published in the **Federal Register** [65 FR 55206] a Supplemental Notice of Proposed Rulemaking (SNPRM), to allow all interested parties another 60 days for comment. On October 12, 2000, the Coast Guard conducted a public meeting at Coast Guard Headquarters, allowing interested parties an opportunity to directly present their views to the Director, Great Lakes Pilotage, and his staff.

This final rule implements the results of the 1999 rate review. It increases the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreases them in Area 5 by 5%; increases them in Area 6 by 4% and in Area 7 by 9%; and leaves them unchanged in Area 8; and it increases average rates by 3%.

Discussion of Comments and Changes

We received, in response to the requests for comments contained in the SNPRM, 18 written comments. We received one comment from the Honorable David E. Bonior of Michigan. We also received one comment from American Great Lakes Ports, one from the United States Great Lakes Shipping Association, one from each of the three District Pilots' Associations, one from the accounting firm of the District 2 Pilots' Association, one from the lawyer for that Association, five from pilots in District 2, one from the chief dispatcher for District 2, one from the President of that Association, one from a pilot in District 1, one from the Grand Lodge, International Masters' Association, and one from the International Longshoremen's Association. All of the commenters address issues that pertained to the 1999 rate review, while some went beyond the scope of the solicitation and dealt with such issues as the methodology used to determine pilots' compensation, the 2000 rate review, and the status of pilots' continuing-education programs. The discussion of comments here can only address issues raised in the 1999 rate review.

The Honorable Mr. Bonior emphasizes that the rates of pay for all pilots providing services on the Great Lakes need to increase at the same level. The rates of pay for all those pilots will increase 11% under the updated rates contained in this final rule. This is because pilots' compensation on the Great Lakes, as stated in the rate-making methodology, 46 CFR part 404, Appendix A, results from a calculation directly linked to the compensation of certain licensed officers serving on U.S.-flag vessels on the Great Lakes. The compensation of pilots providing services on the open and deep ''undesignated'' waters of the Great Lakes is calculated on the current union contract, to include wages and benefits, for first mates serving on such vessels. That of pilots providing services on the confined and shallow ''designated'' waters, perhaps approximating the annual average compensation for masters serving on such vessels, is calculated at 150% of that of first mates. As their compensation is tied directly to the current union contract for first mates, pilots will receive the cumulative increases that the mates (and incidentally the masters) will receive.

Four commenters—the District 2 Pilots' Association, the District 3 Pilots' Association, the accounting firm for District 2, and a pilot in District 2—argue that the methodology, especially in regard to the projection of operating expenses, was flawed because it used 1997 audited data for expenses with 1998 revenues and bridge-hours. 46 CFR part 404, Appendix A, states in Step 1:

''The Director projects the amount of vessel traffic annually. [On the basis of] that projection, he forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover. This consists of the following phases:

(a) Submission of financial [data] from each Association;

(b) Determination of recognizable expenses;

(c) Adjustment for inflation or deflation; and

(d) Final projection of operating expenses.''

The use of 1997 audited data for expenses in conjunction with 1998 data supplied by the Pilots' Associations is consistent with the above guidelines. In 1998, the actual bridge-hour data and revenues for 1998 in each of the pilotage areas became available to the Coast Guard in May, through the submission of an unqualified opinion on audited financial statements for 1998 by each of the Pilots' Associations as required by 46 CFR 403.300. A review of the financial and bridge-hour data indicated that, on average, revenues and bridge-hours throughout the Great Lakes increased 30% from 1997 to 1998. We combined the actual observed increase for each District in 1998 with the projected 5% decrease in traffic for 1999 to establish an overall change in traffic from 1997 to 1999. For example, District 1 experienced an average increase of 36% in bridge-hours from 1997 to 1998. Considering the projected reduction of 5% from 1998 to 1999, combined with an overall projected increase of 36% from 1997 to 1999, yields a net increase of 31% for District 1. For the 1999 rulemaking, each District's approved 1997 expenses were adjusted for inflation [Approved 1997 Expenses x (1+Inflation Factor)], then multiplied by the aggregate percentage change in traffic projected for each District from 1997 to 1999, and then factored for the percentage of the Associations' expenses that change with traffic (pilotage hours). Analysis indicates that 57% of Associations' expenses are affected by a change in pilotage hours. For instance, in District 1 pilotage hours are projected to increase 31% from 1997 to 1999, which is multiplied by 57% ($.31 \times .57 = .18$) to project that the District's operating expenses should increase 18%. Therefore, in this instance, we used the following formula to project 1999 expenses [(Approved 1997 Expenses x (1+Inflation Factor) x (1+(.31 x .57)]. In this instance, to incorporate approved costs of transportation and training into the rate, we added $86,000 to the District's expense base for the 1999 ratemaking.

The District 2 Pilots' Association, the accounting firm for District 2, and two pilots in District 2 disagree with the method used by our independent auditor to determine the cost per pilot-boat trip in District 2. They further insist that pilot-boat expenses in District 2 were not excessive, and disagree with our deduction of $45,602 from the District's expense base to offset the high cost of pilot-boat trips. Our auditor used the following method to calculate the average cost of these trips (two-way). Total pilot-boat expenses were divided by total pilot-boat trips to compute the average cost per trip. 46 CFR 404.5 establishes the guidelines for the Director, Great Lakes Pilotage, in

determining whether to recognize expenses. It specifies that he should evaluate each item to determine whether it is necessary for the provision of pilotage service and, if so, whether it is reasonable—that is, comparable or similar to the expense paid by others in the maritime industry for the same item. Pilot-boat expenses in District 2 average $176 per trip, whereas in District 1 they average $110 and in District 3 they average $83.

The treatment of leased goods and services matters greatly here because fees for leasing—if allowable—count in ratemaking. Fees are allowable if reasonable. District 3 contracts for all pilot-boat services while Districts 1 and 2 operate affiliated companies, owned wholly or partly by registered pilots, to provide these services. These affiliated companies reported net incomes for 1997 of $4,520 in District 1 and $70,506 in District 2. The latter figure represents a 19% return on total equipment and property, less land, at $372,270. In 1997, District 2 paid Erie Leasing $66,000 in fees for the rental of two pilot-boats. The Director considers these fees excessive. 46 CFR 404.5(a)(3) states:

> Lease costs for both operating and capital leases are recognized for ratemaking purposes to the extent that they conform to market rates. In the absence of a comparable market, lease costs are recognized * * * to the extent that they conform to depreciation plus an allowance for return on investment (computed as if the asset had been purchased with equity capital). The portion of lease costs that exceed these standards is not recognized for ratemaking purposes.

Using this methodology, with the reported cost of the pilot-boats at $315,000 and using a market return of 6.9% and a depreciation amount of $9,450, results in an allowable lease of $31,185 ($315,000 x 6.9% = $21,735 + $9,450 = $31,185). To bring pilot-boat expenses for District 2 into line with those for Districts 1 and 3, the Director is reducing the expense base for District 2 by $34,815 ($66,000 rental fee − $31,185 allowable fee = $34,815 excessive fees). He is deducting $34,815 instead of $45,602 from the expense base for District 2.

A pilot from District 1 asserts that the Coast Guard, in the 1999 rate review, did not include 892 bridge-hours performed by pilots on the St. Lawrence River when it determined the requirement of pilots for Lake Ontario. The assertion is accurate. That Review originally determined a requirement of four pilots for Lake Ontario. A recalculation of the bridge-hours for 1999 runs as follows: Lake pilots performed 6,355 bridge-hours in 1998, while river pilots performed 892 bridge-hours, for a total of 7,247 bridge-hours. We projected bridge-hours to decline 5% in 1999, so that the corrected projection for 1999 is 6,885 bridge-hours (7,247 x .95 = 6,885). In accordance with 46 CFR part 404, we then divided 6,885 by 1800 (6,885/1800 = 3.82 pilots) and determined a requirement of four pilots for Lake Ontario for 1999. In view of the significant increase in traffic experienced there during 2000, the Director is authorizing a total of five pilots for Area 2. This total is also consistent with the Memorandum of Arrangements (MOA) with Canada, which states that traffic on Lake Ontario will be evenly divided between American pilots and Canadian. In 1997, total bridge-hours for the two countries approximated 17,254 hours. Fifty percent comes to 8,627 hours; those are the hours that American pilots should expect under the MOA. The 1999 rate review projected a 5% reduction in traffic for the following navigational season, down to 8,196 (8,627 x .95 = 8,196). Dividing 8,196 by the bridge-hour standard of 1800 (8,196 / 1800 = 4.55), gives a figure of 4.55 pilots.

The District 2 Pilots' Association and its accounting firm disagree with the results of the calculation that determined the number of pilots required for their District. 46 CFR part 404 establishes the methodology in determining the number of pilots required for each area: ''The basis for the number of pilots needed in each area of undesignated water is established by dividing the projected bridge-hours by 1800.'' The accounting firm disagreed with the standard of 1800 hours used to determine the number of pilots in undesignated waters; it combined delay, detention, and travel hours with bridge-hours to calculate the number of pilots required in District 2. Yet part 404 establishes 1800 bridge-hours (taking no account of detention, delay, and travel hours) as the standard, and it is the law.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's reduction of $4,800 a year in total rental expenses for a six-bedroom house, rented to the Association by Erie Leasing, an affiliated company. The house serves as temporary accommodations in Port Colburn. The auditor recommended an adjustment, in that similar accommodations in the area rent on average for $400 a month less than the Association pays. However, District 2 pilots do save $52 a night by using this facility instead of a hotel. In 1999, this yielded a saving of about $15,000. In view of the above, the Director has put the $4,800 back into the expense base for District 2.

The District 2 Pilots' Association and its accounting firm also disagree with the Director's decision to disallow legal expenses not directly related to the provision of pilotage services. In September 1999, the Director requested each of the Pilots' Associations to justify its legal expenses under this standard. District 1 justified its, to the extent of $1,244. Districts 2 and 3 did not justify theirs, to any extent. The Director recognized that legal expenses are necessary in today's business environment. Therefore, he used the guidelines in 46 CFR 404.5(a)(2)(i), ''Comparable or similar expenses paid by others in the maritime industry,'' and in 46 CFR 404.5(a)(2)(ii), ''Comparable or similar expenses paid by other industries,'' to determine a fair and equitable allowance for legal expenses in each District. He compared the Association's legal expenses as a percentage of revenues with those of two firms that operate in relatively high-risk environments, an elevator company and an underwater-welding company. The elevator company had revenues between $12 and $18 million a year and legal expenses of $12,000 to $18,000 a year; the welding company had revenues in excess of $15 million a year with legal expenses of less than $10,000 a year. An analysis of the Association's legal expenses as a percentage of revenue since 1995 indicated that those expenses averaged $23,326 or .9% of revenue. In view of today's complex legal climate, the Director views those expenses over the past five years as fair for a Pilots' Association, which also operates in a relatively high-risk environment. Using the .9% of revenue for 1997 as a guideline, he has approved $22,815 in legal expenses for District 2, and $13,258 and $29,552 in legal expenses for Districts 1 and 3, respectively. He is returning these amounts to the Districts' expense bases for present purposes.

The District 2 Pilots' Association, its accounting firm, and one pilot in the District disagree on the disallowance of pilots' training expenses in the District. In summary, they indicate that, because the Director recognized these expenses in the past, he should recognize them now. They argue that until a temporarily registered pilot is permanently registered that person is, in fact, being trained and that during this time the Association has to compensate him. The approval of these expenses in the 1998 rate review was a mistake on the part of the Director. This is so because these expenses were not for instructional courses or material, which he should

have approved, but actually represented compensation or salary paid directly to temporarily registered pilots. Compensation for such pilots is fully accounted for in the ratemaking methodology, as explained in 46 CFR Part 404, Appendix A. Accounting for such pilots' compensation as a training expense inflates the District's expense base by double-counting: The base already accounts for it otherwise.

The District 2 Pilots' Association and its accounting firm also disagree with the independent auditor's deductions from the expense base of $947 for business promotion, $400 in contributions, and $1,988 as uniform expense. The deductions for the first two are justified in that those two are not directly related to the provision of pilotage, as they must be under 46 CFR 404.5. However the Director considers the $1,988 in uniform expense a necessary investment in equipment that actually enhances service and safety. Accordingly he has returned $1,988 to the District's expense base.

The District 2 and District 3 Pilots' Associations disagree with the Director's computation of investment base for calculating return on investment, urging that the Director take into account all assets employed in support of pilotage. 46 CFR part 404, Appendix A, Step 5(3), states that ''Assets subject to return on investment * * * must be reasonable in purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes.'' In calculating rate of return the Director considers property and equipment because cash assets held on deposit earn interest. A significant portion of the large cash balances that pilots' associations accumulate at the end of the calendar year they immediately distribute the next year as pilots' compensation during the months that the St. Lawrence Seaway is closed. The Director's including cash assets would encourage these associations to unnecessarily inflate their investment bases and provide a source of return available to few if any other private businesses. As we explained in the SNPRM, analysis of pilots' associations' investment bases indicates that, ever since the concept of return on investment was introduced into the ratemaking methodology, Districts 2 and 3 have greatly increased their bases. In District 2 the base went from $265,488 in 1995 to $413,998 in 1996, of which only $116,041 represented property and equipment. In District 3 it went from $119,823 in 1995 to $994,896 in 1996, of which only $25,583 represented property and equipment.

The President of the District 2 Pilots' Association observes that pilots' compensation for designated waters of the Great Lakes, under the NPRM, would have come to exactly 1.5 times that of their compensation for undesignated waters of the Lakes. The President indicates that this was not the case in past rulemakings. But target pilots' compensation for designated waters should at least approximate 1.5 times that for undesignated waters. This is so because the former should be 1.5 times first mates' salary plus first mates' benefits, as explained in a final rule published in the **Federal Register** on February 10, 1997 [62 FR 5217].

The daily contractual rate of wages for first mates is multiplied by 54 to determine the monthly rate for undesignated waters. This monthly rate is then multiplied by 1.5 to determine the monthly rate for designated waters (monthly rate for undesignated waters x 1.5 = monthly rate for designated waters). Only then is the cost of benefits (pensions, medical care, and clerical support) added to the monthly rates for both undesignated and designated waters. These figures are then multiplied by 9 to yield total yearly target pilots' compensation. A recalculation of this compensation for designated waters revealed that the figure of $155,466, used in the SNRPM for those waters was in error. The corrected figure is $147,540. The calculation goes as follows: The daily rate of wages specified in the first mates' union contract, effective August 1, 1999, was $179.42. As also specified there, the daily rate is then multiplied by 54 days (30.5 work days, 15 vacation days, 4 weekend days, 1.5 holidays, and 3 bonus days.) to determine the monthly rate, $9,689. Added to this figure are the monthly costs of first mates' pensions, of $1,246; their medical care, of $426, and their clerical support, of $126. The monthly total of wages and benefits comes to $11,487. This figure is then multiplied by 9 to yield total target pilots' compensation for undesignated waters, of $103,383.

For designated waters the monthly rate of wages, calculated above, is multiplied by 1.5, totaling $14,534. To this figure we add the monthly cost of a mates' pension benefits, $1,246; the monthly cost of health benefits, $426; and the monthly cost of clerical support, $188. The monthly total of wages and benefits now comes to $16,395. This figure is then multiplied by 9, to yield total target pilots' compensation for designated waters of $147,540.

Because this final rule may be effective for a portion of the 2001 navigational season on the Great Lakes, we have updated the rates in it to reflect the daily rate of wages in the current first mates' union contract, of $188.39, that became effective August 1, 2000. For those reasons the revised target pilots' compensation for undesignated waters and designated waters are $107,735, and $154,079, respectively.

One commenter, the District 1 Pilots' Association, states that the District's expense base should be adjusted for inflation to reflect the average change in the Consumer Price Index (CPI) until mid-year 2000, not December 1999. The Director agrees and has adjusted the base of each District to reflect the average change in the CPI from the close of the 1997 season to mid-year 2000. This equates to an inflation factor of 4.8%.

The District 2 Pilots' Association and its accounting firm disagree with the deduction of amounts for daily subsistence that did not conform to guidelines of the Internal Revenue Service. 46 CFR Part 404.5 establishes those guidelines as one of the tests used to determine the reasonableness of an expense. For 1997 those guidelines fix $36 a day as the maximum allowable amount of daily subsistence. Pilots in District 2 were paid $40, as stated in the Pilot Association's accounting handbook and confirmed by the District's chief dispatcher during the independent auditor's 1999 audit of the District. The amount in excess of $36, $2,484, we have deducted from the expense base of the District.

The District 2 Pilots' Association and its accounting firm indicate that they do not understand how pilots in District 2 exceeded their target pilots' compensation by 16% in 1998, as the SNPRM stated they did. The 16% is an error; the corrected figure is 5%. In 1998, District 2 was authorized 5 pilots in Area 4 and 9 pilots in Area 5. Target pilots' compensation in the undesignated waters of Area 4 was $97,524 for a subtotal of $487,620 (5 x $97,524), while in designated waters of Area 5 it was $138,762 for a subtotal of $1,248,858 (9 x $138,762). Target pilots' compensation for District 2, then, was a total of $1,736,478 ($487,620 + $1,248,858). The independent audit by the certified public accountant showed that the actual total compensation paid to pilots in District 2 during 1998 was $1,826,905. This means those pilots' compensation exceeded the total target pilots' compensation by 5%.

Summary of Changes

The changes just discussed are summarized in Tables A, B, and C, which follow:

TABLE A.—DISTRICT 1

	Area 1—St. Lawrence River	Area 2—Lake Ontario	Total District 1
Step 1, Projection of operating expenses	$309,479	$263,630	$573,109
Step 2, Projection of target pilot compensation	$1,078,553	$538,675	$1,617,228
Step 3, Projection of revenue	$1,333,991	$687,207	$2,021,198
Step 4, Calculation of investment base	$0	$0	$0
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,388,032	$802,305	$2,190,337
Step 7, Adjustment of pilotage rates	1.04	1.17	1.08

TABLE B.—DISTRICT 2

Methodology	Area 4—Lake Erie	Area 5—South East Shoal to Port Huron Michigan	Total District 2
Step 1, Projection of operating expenses	$647,029	$551,174	$1,198,203
Step 2, Projection of target pilot compensation	$538,675	$1,232,632	$1,771,307
Step 3, Projection of revenue	$1,156,057	$1,886,198	$3,042,255
Step 4, Calculation of investment base	$45,397	$71,006	$116,403
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,188.901	$1,788,804	$2,975,455
Step 7, Adjustment of pilotage rates	1.03	.95	.98

TABLE C.—DISTRICT 3

Methodology	Area 6—Lakes Huron and Michigan	Area 7—St. Mary's River	Area 8—Lake Superior	Total District 3
Step 1, Projection of operating expenses	$692,430	$131,178	$476,862	$1,306,471
Step 2, Projection of target pilot compensation	$1,185,085	$616,316	$861,880	$2,591,100
Step 3, Projection of revenue	$1,797,967	$688,583	$1,338,912	$3,825,462
Step 4, Calculation of investment base	$11,997	$4,595	$8,934	$25,526
Step 5, Determination of target return on investment	7.04%	7.04%	7.04%	7.04%
Step 6, Adjustment determination	$1,878,359	$753,819	$1,339,371	$3,971,549
Step 7, Adjustment of pilotage rate	1.04	1.09	1.00	1.04

As summarized in Tables A, B, and C, the Coast Guard amends the pilotage rates dictated by 46 CFR, §§ 401.405, 401.407, and 401.410, by increasing the rates for pilotage on the Great Lakes in Area 1 by 4%, in Area 2 by 17%, and in Area 4 by 3%; decreasing them in Area 5 by 5%; increasing them in Area 6 by 4% and in Area 7 by 9%; and leaving them unchanged in Area 8; and by increasing average rates by 3%.

Regulatory Evaluation

This final 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 rule makes minimal adjustments to the pilotage rates for the Great Lakes' 2001 shipping season. The Coast Guard has used the ratemaking methodology found in 46 CFR Part 404, Appendix A, to identify adjustments necessary to achieve target pilots' compensation by establishing these new rates for pilotage. This methodology is designed to review pilotage rates every year so as to avoid large changes in them and ultimately avoid large fluctuations in pilots' compensation. This rule provides a step-by-step economic guide to show how the methodology works. This rulemaking will help accomplish the Coast Guard's desire for a safe, reliable, and efficient pilotage system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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.

For the Great Lakes, small entities potentially affected by this rule include shippers, Great Lakes ports, carriers, and shipping agents. The overall

increase in pilotage rates on the lakes should not significantly affect small businesses. This is true because the overall average increase in rates, of 3%, is less than the approximate increase in the CPI, of 5%, since the rates were last changed, in 1997. 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at 202–267–1241, by facsimile 202–267–4700, or by email at *tlawler@comdt.uscg.mil.*

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

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

It is well settled that States are precluded from regulation in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the field foreclosed from regulation by States. [See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 120 S. Ct. 1135, 2000 U.S. LEXIS 1895 (March 6, 2000).] Since this rule involves the numbers and compensation for pilots on vessels transiting the Great Lakes, it is a matter of manning, and so precludes States from regulation. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

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 final rule both is required by law and will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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 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 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 create an environmental risk to health or a risk to safety that may disproportionately affect children.

Indian Tribal Governments

This 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

We have considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 401

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. Revise the citation of authority for part 401 to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507

2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$8 per kilometer or $14 per mile.[1]
Each Lock Transited	$178.[1]
Harbor Movage	$584.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $389, and the maximum basic rate for a through trip is $1709.

(b) *Area 2 (Undesignated Waters):*

Service	Lake Ontario
Six-Hour Period	$344
Docking or Undocking	328

3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) *Area 4 (Undesignated Waters):*

Service	Lake Erie (east of South-east Shoal)	Buffalo
Six-Hour Period	$335	$335
Docking or Undocking	258	258
Any Point on the Niagara River below the Black Rock Lock	N/A	658

(b) *Area 5 (Designated Waters):*

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of South-East Shoal	$939	$554	$1,218	$939	N/A
Port Huron Change Point	[1] 1,634	[1] 1,893	1,228	955	$679
St. Clair River	[1] 1,634	N/A	1,228	1,228	554
Detroit or Windsor or the Detroit River	939	1,218	554	N/A	1,228
Detroit Pilot Boat	679	939	N/A	N/A	1,228

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a) and (b) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior and the St. Mary's River.

* * * * *

(a) *Area 6 (Undesignated Waters):*

Service	Lake Superior
Six-Hour Period	$280
Docking or Undocking	266

(b) *Area 7 (Designated Waters):*

Area	Detour	Gros cap	Any harbor
Gros Cap	$1,436	N/A	N/A
Wharf of Algoma Steel Corporation at Sault Ste. Marie, Ontario	1,436	$541	N/A
Any point in Sault Ste. Marie, Ontario, except the Wharf of Algoma Steel Corporation	1,204	541	N/A
Sault Ste. Marie, Michigan	1,204	541	N/A
Harbor Movage	N/A	N/A	$541

* * * * *

§ 401.420 [Amended]

5. Amend § 401.420 as follows: a. In paragraph (a), remove the number ''$51'' and add, in its place, the number ''$53''; and remove the number ''$807'' and add, in its place, the number ''$831''.

b. In paragraph (b), remove the number ''$51'' and add, in its place, the number ''$53''; and remove the number ''$807'' and add, in its place, the number ''$831''.

c. In paragraph (c)(1), remove the number ''$305'' and add, in its place, the number ''$314''; and, in paragraph (c)(3), remove the number ''$51'' and add, in its place, the number ''$53'' and, also in paragraph (c)(3), remove the number ''$807'', and add, in its place, the number ''$831''.

§ 401.428 [Amended]

6. In § 401.428, remove the number ''$312'' and add, in its place, the number ''$321''.

Dated: May 25, 2001.

Paul J. Pluta,

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

[FR Doc. 01–17385 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA FAR Supplement (NFS) to clarify the information technology (IT) security requirements for sensitive information contained in unclassified automated information resources

DATES: *Effective Date:* This interim rule is effective July 12, 2001.

Applicability Date: This amendment applies to all contracts awarded on or after the effective date.

Comment Date: Comments should be submitted to NASA at the address below on or before September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Karl Beisel, NASA Headquarters, Code HC, Washington, DC 20546, (202) 358–0416 kbeisel@mail.hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, require that adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. NFS Part 1804 contains the requirement for all NASA contractors and subcontractors to comply with NASA policies in safeguarding unclassified NASA data held via information technology (IT). This interim rule clarifies NASA requirements by revising the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, and amending Section 1804.470 to clarify the applicability and requirements of the clause.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because this interim rule only clarifies existing requirements and does not impose any new requirements.

C. Paperwork Reduction Act

This interim rule clarifies existing requirements that were previously approved by the Office of Management and Budget (OMB) under OMB Control No. 2700–0098.

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that the clarifications contained in this interim rule are needed to ensure consistent implementation of NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Revise sections 1804.470–1, 1804.470–2, 1804.470–3, and 1804.470–4 to read as follows:

1804.470–1 Scope.

This section implements NASA's acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470–2 Policy.

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. The provision of information technology (IT) security in accordance with these policies and procedures, is required in all contracts that include IT resources or services in which a contractor must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement costs should the contractor's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The contractor must not use or redistribute any NASA information processed, stored, or transmitted by the contractor except as specified in the contract.

1804.470–3 Security plan for unclassified Federal Information Technology systems.

(a) The requiring activity with the concurrence of the Center Chief Information Officer (CIO), and the Center Information Technology (IT) Security Manager, must determine whether an IT Security Plan for unclassified information is required.

(b) IT security plans must demonstrate a thorough understanding of NPG 2810.1 and NPD 2810.1 and must include, as a minimum, the security measures and program safeguards planned to ensure that the information technology resources acquired and used by contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;

(5) Document and follow a virus protection program for all IT resources under its control; and

(6) Document and follow a network intrusion detection and prevention program for all IT resources under its control.

(c) The contractor must be required to develop and maintain an IT System Security Plan, in accordance with NPG 2810.1, for systems for which the contractor has primary operational responsibility on behalf of NASA.

(d) The contracting officer must obtain the concurrence of the Center Chief of Security before granting any contractor requests for waiver of the screening requirement contained in the clause at 1852.204–76.

1804.470–4 Contract clauses.

The contracting officer must insert a clause substantially the same as the clause at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts which require submission of an IT Security Plan.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 1852.204–76 to read as follows:

1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4, insert a clause substantially as follows:

Security Requirements for Unclassified Information Technology Resources, July 2001

(a) The Contractor shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Contractor for NASA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology

resources or services in which the Contractor must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, *e.g.* bypassing a firewall.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within ____days after contract award, the contractor shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the offeror's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(d)(1) Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this clause. Those Contractor personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this clause, unless contractor screening in accordance with paragraph (d)(4) is approved. The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of ''level 1'' data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the contractor for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions (Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable);

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Contracting Officer may allow the Contractor to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate that the procedures used by the Contractor are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of contractor personnel may be waived by the Contracting Officer for those individuals who have proof of—

(1) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Contractor, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer under paragraph (d)(4) of this clause.

(e) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The contractor may use web-based training available from NASA to meet this requirement.

(f) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

[FR Doc. 01–17131 Filed 7–11–01; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010122013–1013–01; I.D. 070901A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: MFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This is action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 9, 2001, through 2400 hrs, A.l.t., December 31, 2001.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Gulf of Alaska (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 CFR part 679.

The 2001 TAC of Pacific ocean perch for the West Yakutat District was established as 870 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for Pacific ocean perch in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 820 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

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 2001 TAC of Pacific ocean perch for the West Yakutat District of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the 2001 TAC of Pacific ocean perch for the West Yakutat District of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

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

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

Dated: July 9, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–17481 Filed 7–9–01; 3:28 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 134
Thursday, July 12, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend the regulations on methods of withdrawing funds from the Thrift Savings Plan (TSP) to eliminate the option to transfer a financial hardship in-service withdrawal to an individual retirement account (IRA) or other eligible retirement plan. This is consistent with the Internal Revenue Code's rules for similar distributions from private sector plans. The proposed amendment also incorporates administrative changes in calculating the amount of a financial hardship withdrawal.

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

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (I.R.C.) (26 U.S.C. 401(k)). The TSP is qualified under section 7701(j) of the I.R.C. (26 U.S.C. 7701(j)). Sums in the TSP are held in trust for the TSP participant.

Analysis

Part 1650 was published in final form in the **Federal Register** on September 18, 1997 (62 FR 49112), and was subsequently amended by a final rule published in the **Federal Register** on June 9, 1999 (64 FR 31052). This proposed rule further amends the final rule.

The Board proposes to revise § 1650.42(b) to provide that a financial hardship withdrawal may no longer be transferred to an IRA or other eligible retirement plan. The Board proposes to eliminate this option to transfer because transfer is available only for distributions which meet the Internal Revenue Service (IRS) requirements for an eligible rollover distribution. However, the IRS no longer considers a financial hardship withdrawal to be an eligible rollover distribution. *See* 26 U.S.C. 402(c)(4). Instead, a financial hardship withdrawal is treated as a nonperiodic payment.

Section 402(c)(4) applies to plans qualified under section 401(k) of the I.R.C. (26 U.S.C. 401(k)); this does not include the TSP, which is a plan qualified under section 7701(j) (26 U.S.C. 7701(j)). Nevertheless, the Board proposes to follow the IRC rule that applies to private sector plans. (An age-based in-service withdrawal continues to be eligible for transfer to an IRA or other qualified plan.)

As a consequence of this change, the Board also proposes to eliminate § 1650.31(b) which allows a participant to elect additional tax withholding from a financial hardship in-service withdrawal to ensure that he or she receives an amount adequate to cover the entire financial hardship, after withholding. However, unlike an eligible rollover distribution, a participant can avoid withholding (or can increase withholding) on a nonperiodic distribution by submitting an IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments. Since the participant can obtain the full amount of the withdrawal by submitting this form to the TSP record keeper, the option to increase the amount of the withdrawal is no longer necessary.

Other changes to § 1650.31 include changes to (b)(2) to clarify that the documentation supporting a financial hardship withdrawal request based upon an extraordinary expense must be dated within 45 days of the request. Proposed § 1650.31 also includes a new paragraph (d). The new paragraph explains that a participant who has a pending Chapter 13 bankruptcy action is not eligible for a financial hardship withdrawal because the TSP presumes that the bankruptcy court is providing adequate funds for the participant's living expenses.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1650

Alimony, Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Board proposes to amend 5 CFR part 1650 as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

2. Section 1650.31 is revised to read as follows:

§ 1650.31 Financial hardship withdrawals.

(a) A participant who has not separated from Government employment and who can demonstrate financial hardship is eligible to withdraw all or a portion of his or her own contributions to the TSP (and their attributable earnings) in a single payment to meet certain specified financial obligations. The amount of a financial hardship withdrawal must be at least $1,000.

(b) A participant will demonstrate financial hardship if he or she meets one or both of the following tests:

(1) Based on TSP calculations, the participant's monthly cash flow is negative (*i.e.,* net income is less than ordinary monthly household expenses).

(2) The participant has incurred, or will incur within the next six months, extraordinary expenses which the participant has not paid, for which he or she has not been and will not be reimbursed, and which cannot be met by his or her monthly cash flow over a period of six months. Documentation of the expenses must be dated within 45 days of the date of the withdrawal request. Extraordinary expenses are limited to the following four types:

(i) Medical expenses payable by the participant and related to the treatment of the participant, the participant's spouse, or the participant's dependents. Generally, eligible expenses are those that would be eligible for deduction as medical expenses for Federal income tax purposes, but without regard to the Internal Revenue Service's (IRS) income limitations on deductibility. However, the following expenses that are allowed by the IRS are not eligible TSP medical expenses: health insurance premiums and expenses associated with household improvements required as a result of a medical condition, illness, or injury to the participant, the participant's spouse, or the participant's dependents. These items are already taken into account elsewhere in the TSP financial hardship calculations.

(ii) The cost of household improvements required as a result of a medical condition, illness or injury to the participant, the participant's spouse, or the participant's dependents which is eligible for deduction as a medical expense for Federal income tax purposes, but without regard to the IRS income limitations on deductibility or the fair market value of the property. Household improvements are structural improvements to the participant's living quarters or the installation of special equipment that is necessary to accommodate the circumstances of the incapacitated person.

(iii) The cost of repair or replacement resulting from a personal casualty loss that would be eligible for deduction for Federal income tax purposes, but without regard to the IRS income limitations on deductibility, fair market value of the property, or number of events. Personal casualty loss includes damage, destruction, or loss of property resulting from a sudden, unexpected, or unusual event, such as an earthquake, hurricane, tornado, flood, storm, fire, or theft.

(iv) Legal expenses for attorney fees and court costs associated with separation or divorce. Court-ordered payments to a spouse or former spouse and child support payments are not allowed, nor are costs of obtaining prepaid legal services or other coverage for legal services.

(c) The amount of a participant's financial hardship withdrawal cannot exceed the smallest of the following:

(1) The amount requested;

(2) The amount in the participant's account that is equal to his or her own contributions and attributable earnings; or

(3)(i) The amount which would both:

(A) Make up the participant's negative cash flow, if any, for a period of six months; and

(B) Pay documented extraordinary expenses, if any.

(ii) If the TSP calculates that the participant has a negative cash flow and extraordinary expenses, the amount of the disbursement is equal to six times the amount of the negative monthly cash flow plus the amount of the extraordinary expenses. If the TSP calculates that the participant has a positive cash flow, the amount of the disbursement is equal to the amount of the documented extraordinary expenses minus six times the amount of the positive monthly cash flow.

(d) A participant is not eligible for an in-service hardship withdrawal during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code.

3. Section 1650.42 is revised to read as follows:

§ 1650.42 Taxes related to in-service withdrawals.

(a) When an in-service withdrawal is paid directly to a participant from the TSP, the money is taxable income in the year in which the payment is made. However, a participant does not pay taxes on money that the TSP transfers directly to an IRA or other eligible retirement plan until the money is withdrawn from the IRA or plan.

(b) A financial hardship in-service withdrawal from the TSP is not an eligible rollover distribution, and a participant therefore may not request the TSP to transfer a financial hardship in-service withdrawal to an IRA or other eligible retirement plan. A financial hardship in-service withdrawal is subject to 10% withholding. The withholding is not mandatory; the participant may either avoid the withholding or increase the amount of withholding by submitting an IRS Form W–4P, Withholding Certificate for Pension or Annuity Payments, to the TSP record keeper.

(c) An age-based in-service withdrawal from the TSP is an eligible rollover distribution, and a participant may request the TSP to transfer all or a portion of an age-based in-service withdrawal to an IRA or other eligible retirement plan, consistent with paragraph (d) of this section. If the withdrawal is not transferred, it is subject to mandatory 20% withholding. (The participant may increase the amount of withholding by submitting an IRS Form W–4P to the TSP record keeper.)

(d) A transfer or rollover may be requested by filing with the TSP record keeper a TSP Form 75–T. An eligible retirement plan is a plan defined in the Internal Revenue Code, 26 U.S.C. 402(c)(8). There are four types of eligible retirement plans: an individual retirement account (IRA), an individual retirement annuity (other than an endowment contract), a qualified pension, profit-sharing, or stock bonus plan, and an annuity plan described in 26 U.S.C. 403(a). An eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

[FR Doc. 01–17482 Filed 7–11–01; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 274

[Amendment No. 392]

RIN 0584–AC37

Food Stamp Program, Regulatory Review: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer (EBT) Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action will revise Food Stamp Program rules affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer systems. The changes will increase State agency flexibility in administering the program and maximize the advantages afforded by the technology. We are proposing the revisions to streamline program administration and improve customer service.

DATES: Comments must be received on or before September 10, 2001 to be assured of consideration.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above address or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. This rule, however, is not economically significant, since it is not expected to have an economic impact on the economy of $100 million or more in any one year.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule which proposes numerous changes to the requirements for approval and operations of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits. All of the provisions in this rule are discretionary. FNS is not aware of any case where any of these provisions would in fact preempt State law. Prior to drafting this proposed rule, we received input from State agencies at various times. Several of the provisions are in direct response to State agency concerns and some, in fact, codify policies already implemented by State agencies operating EBT systems. Since the Food Stamp Program (FSP) is a State administered, federally funded program, our national headquarters staff and regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding EBT implementation issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we sent representatives to regional, national, and professional conferences to discuss our issues and receive feedback on EBT implementation.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, the Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this proposed rule announces our intent to revise information collection 0584–0083 and reduce the amount of information collected as part of the Advanced Planning Documents (APD) required of State agencies requesting funding for an Electronic Benefit Transfer (EBT) system for food stamps.

Comments on this proposed rule must be received by September 10, 2001.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Mr. Cohen at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For Further Information Contact: Jeffrey N. Cohen, (703) 305–2522.

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Type of Request: Revision of a currently approved collection.

Abstract: Under section 7(i) of the Food Stamp Act of 1977, as amended (FSA), (7 U.S.C. 2016(i)) the Secretary is authorized to permit State agencies to implement Electronic Benefit Transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and may require analysis of the implementation results in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit a written plan of action called an Advance Planning Document (APD) to the Food and Nutrition Service (FNS).

In this proposed rulemaking, we are revising Food Stamp Program rules affecting the standards for approval and operation of Food Stamp EBT systems. Several of the provisions will reduce the amount of information required for a State agency to submit as part of the standard APD. We are proposing these revisions in response to the evolution of EBT over time, which has rendered some of the information we are currently collecting unnecessary.

With provisions in this regulation, we are proposing to eliminate or reduce the reporting requirements as described below.

• State agencies will no longer need to provide FNS with the written planning and implementation APD approvals from other participating Federal agencies, or indicate that approval is being sought simultaneously from other participating Federal agencies.

• State agencies will be required to submit a substantially abbreviated planning APD compared to what is currently required. The document will include a brief letter of intent, a budget, a cost allocation plan and a schedule of activities and deliverables.

• State agencies will no longer need to submit an acceptance test report unless FNS is not present at the testing or if serious problems are found during the test.

• State agencies will no longer have to submit quarterly pilot project reports, but rather, report problems or issues to FNS when they occur or are identified.

• State agencies will not be required to submit a pilot cost analysis.

• The State agency will not need to submit an APD update requesting FNS approval to expand EBT operations beyond the pilot area unless there are substantive changes to the implementation plan. State agencies may expand EBT simultaneously with pilot operations, unless significant problems arise.

As currently approved by OMB, the estimated time to gather information and complete an EBT APD is 45 hours per respondent. The recordkeeping burden includes maintaining a copy of the system design specifications, the APD submission, approvals and APD updates. A total of 39 States are operational with EBT systems and we expect 41 States to operate EBT systems within the next year. In addition to the remaining States, some EBT States will be entering new contracts as their current contracts expire. We estimate 10 State agencies will submit an APD each year, for a total of 450 hours.

Estimates of Burden: We estimate the provisions of this proposed rule, as listed above, will reduce the amount of time each State agency spends on an APD for EBT by 10 hours, for an overall decrease in burden hours of 100 hours annually, bringing the total time down to 35 hours per respondent.

Respondents: State agencies.

Estimated number of Respondents: 10 State agencies per year.

Estimated number of Responses per respondent: One.

Estimated annual number of responses: 10.

Estimated Total Annual Burden on Respondents: 350 hours.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) of the FSA and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the FSA and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 278.8.

Public Law 104–4

Title II of the Unfunded Mandate 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, the FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with the ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, FNS is proposing to revise food stamp regulations affecting the standards for approval and operation of Food Stamp Electronic Benefit Transfer Systems. The revisions will streamline administration of the program, offer greater flexibility to State agencies in enacting policy, and improve customer service. Other provisions have been clarified in order to facilitate implementation by State agencies.

Electronic Benefit Transfer Issuance System Approval Standards—7 CFR 274.12

On April 1, 1992, the Department issued a final rule establishing standards for operation of on-line Electronic Benefit Transfer (EBT) Systems as an alternative to coupons. Those regulations were promulgated in accordance with the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Leland Act), Pub. L. 101–624, as part of a package of items aimed at improving the efficiency and effectiveness of program operations.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) signed by the President August 22, 1996, further authorizes use of off-line EBT technology, which uses a self-contained benefit access device, commonly known as a smartcard, to access benefits. The provisions of this rulemaking pertain to both on-line and off-line systems, unless otherwise specified. Currently, no industry standards exist for off-line smartcard systems. We intend to propose standards for off-line EBT systems in the future once those industry standards are developed. However, we have learned a great deal about off-line EBT systems from those currently operating. State agencies interested in implementing off-line systems may submit proposals for approval which will be evaluated on a case by case basis, pending the publication of specific off-line standards.

When the EBT regulations were initially issued, EBT systems were still in their infancy and had only been implemented in a few pilot areas. However, as more and more State agencies went on-line with EBT, other State and federal agencies implementing EBT were able to learn and benefit from those early efforts. As a result, State agencies have been able to roll-out their systems more aggressively and with greater ease by replicating the system designs of operational State agencies, with some State-specific modifications. In order to keep pace with the strides

made in EBT implementation, the Department has reviewed the EBT regulations and is proposing modifications to the rules to reflect a more standardized and streamlined approach to EBT system approvals. Provisions which would improve program administration through greater State agency flexibility, automation and integrity have also been proposed in this rulemaking. Other provisions would be clarified by reorganizing or deleting paragraphs, in order to simplify implementation for State agencies. The major revisions are discussed below.

System Approvals

Current regulations at 7 CFR 274.12(b)(1) require that State agencies submit APDs for approval of EBT systems. We are clarifying in this proposed rule our expectation that State agencies continue to follow the APD process when procuring subsequent EBT systems after the initial system contract comes to an end.

Current regulations at 7 CFR 274.12(b)(4) require that the State agency provide written approval to FNS of the Planning and Implementation Advanced Planning Documents from other participating Federal agencies or indicate that approval is being sought simultaneously from participating Federal agencies. This requirement was intended to keep FNS informed on where other Federal agencies were in the EBT project approval process, including any issues that could potentially effect project approval by other agencies. However, in May 1994, FNS was designated the ''lead program agency'' for the Federal Government with regard to State EBT systems. In this role, FNS now coordinates document approvals and provides State agencies with a single point of contact in the Federal Government, when necessary. Since State agencies no longer need to coordinate document approvals from relevant Federal agencies, we propose eliminating this requirement.

The Department is also proposing to reduce the amount of State EBT planning documentation to be submitted for EBT systems approval, as required in 7 CFR 274.12(c)(1). The Department is confident that State agencies recognize the importance of careful and thorough project planning for EBT system implementation. There is no longer a need for FNS to receive the current level of detail on planning activities to provide sufficient agency oversight. Therefore, this rule proposes to modify regulations at 7 CFR 274.12(c)(1)(i) and 274.12(c)(1)(ii) to make Planning Advanced Planning Documents (PAPD) less burdensome and less prescriptive in terms of the information required, by:

(1) Eliminating the specifications contained in (i) and (ii) for pilot project site and expanded site descriptions and description of major contacts; and

(2) Indicating that only minimal information be contained in the PAPD, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

System Testing

To further decrease the burden on State agencies to document all aspects of the EBT planning process, the proposed regulations at 7 CFR 274.12(c)(2)(i) would no longer require a functional demonstration test plan or report. This was operationalized in our streamlined procedures implemented in 1994. Although we no longer require the documentation, we continue to recommend that State agencies demand a functional demonstration test of their vendors, particularly if functions of the system are new for that vendor. Without such a test for the State agency's benefit, avoidable functional problems could arise later in the acceptance test and result in the project's delay.

In general, extensive acceptance testing must be successfully completed prior to system operation, as stipulated in section 274.12(c)(2)(iii)(B). Since experience has shown that EBT systems are often modified over the life of a State agency's contract with a particular vendor, it may be necessary to repeat any or all of these tests if significant changes are made to the system after the system is operational. Therefore, the Department is clarifying this provision by indicating that FNS reserves the right to require such re-testing, if warranted.

The Department is also proposing to revise the current provisions at 7 CFR 274.12(c)(2)(iv), which require the State agency to provide an acceptance test report. Under most circumstances, FNS will no longer require this report; however, a report will be necessary if FNS is not present at the testing or serious problems are uncovered during the test.

Pilot Operation and Reporting

Current requirements at 7 CFR 274.12(c)(4)(i) stipulate that pilot project reports contain standard information as prescribed in subparagraphs (A) through (R). Now that EBT is no longer in its infancy, this information has proven to be excessive, and is often irrelevant to the task of identifying issues that have surfaced during the pilot shakedown period. The general intent of pilot project reports is to identify any problems which need to be resolved prior to expansion. The Department is proposing to delete 7 CFR 274.12(c)(4)(i)(A) through (c)(4)(i)(R) and replace them with less rigid requirements and to allow State agencies latitude to discern which details are relevant for their particular pilot. Reporting would no longer be required on a quarterly basis, rather, it would occur as issues or problems arise.

Current regulations at 7 CFR 274.12(c)(5) require the State agency to conduct a cost analysis comparing the actual EBT pilot project costs to the costs of the EBT system operations projected in the Implementation APD and the costs of the coupon issuance system being replaced. This data was collected for information purposes only. However, it is a particularly cumbersome and costly requirement for State agencies and FNS has been waiving the requirement for some time. Therefore, the Department is proposing that this requirement be eliminated.

Current regulations at 7 CFR 274.12(d) require a minimum of three months of full pilot project operation prior to obtaining approval for expansion. State agencies complained that this requirement led to unnecessary delays in project expansion and additional costs while they wait for completion of analyses and FNS approval. FNS recognized that EBT systems have matured to the point where it is unusual to have significant problems. There remains, however, a statutory requirement for a pilot.

Consequently, FNS has been allowing State agencies to expand beyond the pilot area prior to the end of the three month period as long as they provide the required information on the pilot area. In keeping with this policy, we are now proposing that FNS negotiate a suitable pilot area with each State agency to be the basis of the three-month analysis and reporting. State agencies will not need to cease expansion activities as long as this pilot area operates without major difficulties. Expansion may continue as agreed in the implementation plan; however, FNS reserves the right to halt roll-out activities if problems arise during pilot or project expansion.

Retailer Management

Current regulations at 7 CFR 274.12(f)(4)(v) require State agencies to ensure that retailer equipment is replaced or repaired within 24 hours. We have found, however, that under certain circumstances, particularly in rural settings, it may be impossible for State agencies to guarantee this

standard. Therefore, we propose that this timeframe be extended to 48 hours.

Current regulations at 7 CFR 274.12(f)(4)(vi) require State agencies to ensure that retail store employees are trained in system operation prior to implementation. This requirement was originally established to facilitate EBT conversion and to ensure that retailers were provided with the training needed to effectively participate in the program. However, the infrastructure has matured, commercial POS deployment is more prevalent and more stores are using their own systems. Consequently, mandating that all retailers receive specialized training provided by the State agency is no longer necessary. We are, therefore, proposing that State agencies continue to ensure that training is offered to all retailers, but allow retailers to opt out of this instruction if they desire. For tracking purposes, State agencies shall direct retailers to confirm in writing that they are waiving their training option.

Current regulations at 7 CFR 274.12(f)(4)(vii) require that FNS compliance investigators be provided access to State EBT systems in order to conduct investigations of program abuse and alleged violations. We are expanding this requirement for ''access'' to include other FNS staff involved in compliance activity from FNS regional and field offices and as well as staff from the Department's Office of Inspector General, and specifying that they have on-line access to a State agency's EBT system. This may demand the deployment of administrative terminals to Compliance Branch Area offices, Regional offices and Field offices in order to achieve this requirement. Also, FNS compliance investigators, as well as investigators from the Department's Office of Inspector General, must have access to EBT cards with accounts that are updated as necessary for use in food stamp investigations.

Transaction Receipts

Current regulations at 7 CFR 274.12(g)(3)(ii) require that the information contained on transaction receipts comply with the requirements of 12 CFR part 205 (Regulation E). The provisions of 12 CFR part 205 allow card numbers to be truncated on the printed receipt. However, it does not require truncation. Regulations at 7 CFR 274.12(g)(3)(iii) require that the primary account number or a coded transaction number be included on the receipt. FNS recognized the vulnerability that results from printing the entire card number on a receipt in EBT systems due to the existence of manual and key-entered transactions and recommended to State agencies that a truncated card number be printed on the receipt. While this policy has been adopted in every operational project to date, we want to be sure it remains this way. Therefore, in the interest of consistently protecting client information, FNS proposes to require truncation of the card number in addition to requirements of 12 CFR part 205.

Benefit Issuance and Replacement

The Department is proposing a revision to the regulations at 7 CFR 274.12(g)(5)(i) which require Personal Identification Number (PIN) selection. The use of PIN assignment is becoming more widespread in the commercial world and is of interest to State agencies because of the potential cost savings it provides. Several States have requested waivers to allow this approach and it has already been implemented in many States. Therefore, we propose that this section be amended to allow PIN assignment in accordance with commercial industry standards, as long as clients have the ability to later select their PIN if they so desire and are informed of this alternative.

Current regulations at 7 CFR 274.12(g)(5)(ii) require a State agency to replace lost or stolen EBT cards within two days. At the same time, the preamble in our April 1, 1992 rule (57 FR 11230) invites the State agency to request a waiver to allow for a replacement time up to five days if the State agency is using centralized issuance. Several State agencies have received such a waiver and have not reported any significant inconvenience to clients.

In order to save costs, many State agencies now issue EBT cards centrally through the mail rather than over-the-counter at the local office. This approach also saves recipients from having to make a separate trip to have their cards issued. However, it is impossible for State agencies to meet a 24-hour time limit for card replacements when issuing cards centrally. Moreover, for security purposes, State agencies are required to send the EBT card and the PIN separately when cards are issued through the mail. Security expectations are generally that there should be at least 3 days between when the card arrives at a home and when the PIN arrives. For these reasons, we propose that this section be amended to permit up to five days for card replacement when a State is using centralized mail issuance.

At the same time, we are clarifying that the intent of ''card replacement'' requirements is to ensure that clients are given access to their benefits within the specified time frame. This means that regardless of what time frame the State agency has indicated for card replacement (e.g., 2 days, 5 days) the client must have in hand an active card and PIN, with available benefits on the card, within the time frame specified by the State agency.

Household Training

Current provisions at 7 CFR 274.12(g)(10) call for a ''hands-on'' approach to household training. This leads to considerable costs for State agencies and is not the only effective means to provide this service to clients. In EBT projects to date, several State agencies have sought waivers in this area to allow for mail training, videos, and kiosk approaches in lieu of a ''hands-on'' component. Since State agencies are in the best position to decide which approach is most viable for their particular environment and client population, the Department proposes amending this section to continue to require household training without specifying a particular method for the general population. However, hands-on training must be available as a back-up for those clients who request it, for special needs populations such as the elderly, or for those individuals identified as having problems with the EBT system.

Retailer Participation

FNS Authorization: Current regulations at 7 CFR 274.12(h)(1)(ii) include procedural directions for FNS field offices regarding authorizations of Food Stamp retailers. Since these requirements are not directed at State agencies, we are proposing to delete the provisions from this citation. This would not change current policy.

Fees: Current law at section 7(h)(2) of the Food Stamp Act (7 U.S.C. 2016(h)(2)) and regulations at 7 CFR 274.12(h)(2) state that authorized retailers shall not be required to pay costs essential to EBT system operations that are utilized solely for the Food Stamp Program. The Department wishes to reiterate that retailers cannot be required to pay for costs related to EBT for Food Stamps. This includes any fees associated with food stamp transactions. Note that while retailers cannot be charged fees for such transactions on government-provided terminals, they can be charged for commercial/third party processor food stamp transactions. This issue has also surfaced in operating projects with regard to potential bank charges. There have been some instances where banks have attempted to impose a fee on retailers for food

stamp EBT redemption services. This is contrary to regulations.

State agencies have argued and the Department agrees that this prohibition on charging retailers should not be extended to cover the following costs which result from abuses, breach of contract, or negligence on the part of the retailer:

(1) cost for the replacement of lost, stolen or damaged equipment;

(2) materials and supplies for POS terminals not provided by the State agency; and

(3) telecommunication costs for any non-EBT use by retailers when lines are provided by the State agency. This would also allow the State agency to remove phone lines that they have installed and maintained for food stamp transactions in instances where there is significant misuse of the lines.

Several State agencies have sought waivers to allow charges to retailers in these circumstances in the interest of avoiding abuses in these areas. Therefore, we propose to revise this section to allow State agencies to charge retailers reasonable fees only in the circumstances outlined above.

POS Deployment: Current regulations at 7 CFR 274.12(h)(4)(ii) prescribe a formula for minimum POS deployment ''up to the number of lanes in each store.'' The Department believes that this provision has been interpreted by some to be unnecessarily restrictive. State agencies have the flexibility under current regulation to deploy terminals at customer service booths or other locations in the store for balance inquiry or other purposes, as many State agencies have done. However, because this policy has been often misinterpreted to prohibit such deployment, we are proposing to clarify that State agencies may deploy terminals beyond the number of lanes in a store at the State agency's discretion.

Minimum Card Requirements

Current regulations at 7 CFR 274.12(i)(6)(i)(B) require that FNS's statement of non-discrimination be printed on the card or card jacket. Several issues have arisen as a result of this requirement. Since many States are implementing multi-benefit programs on a single card, the inclusion of this statement, which is specific to FNS benefit programs, is no longer practical. In addition, many households are unclear about the circumstances under which they should contact the State, the State's contractor, or FNS about a particular problem. Consequently, the address provided to notify FNS of discrimination incidents has been misused and has been a source of client confusion and frustration.

Furthermore, since publication of the regulations, a Departmental non-discrimination statement has been issued in Departmental Regulation 4300 (DR 4300) and now replaces the FNS statement. The non-discrimination statement in DR 4300 differs from that in the EBT rules by directing recipients to report instances of discrimination to the USDA Office of Civil Rights rather than to FNS. The statement reads, ''In accordance with Federal law and the U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''

Since State Agencies are already expected to provide this non-discrimination statement on application forms, handbooks, manuals and other material distributed to the system users, the Department is proposing that this statement be removed from the card or card jacket. Recipients must be notified of their non-discrimination protections as part of household training. FNS regulations at 7 CFR 274.12(g)(10) would be revised to reflect this change.

Concentrator Bank Responsibilities

Current regulations at 7 CFR 274.12(j)(1)(iii) describe the reimbursement procedures for crediting retailers through the Payment Management System. This mechanism has been phased-out and replaced by the Automated Standard Application for Payment (ASAP) system developed for the U.S. Treasury Department by the Federal Reserve Bank of Richmond. Therefore, the Department is proposing revisions to this section which update the new crediting procedures. ASAP improves service to retailers in that it allows for a much later cut-off window than the previous system, and, at the same time, ensures next-day reimbursement even with the later cut-off time. State agencies will need to accommodate the new communication linkages and data flow requirements as prescribed by FNS.

In conjunction with the ASAP system, FNS has entered into a partnership with the Federal Reserve Bank of Richmond to develop the Account Management Agent (AMA) system. The AMA system supports the Department's efforts to improve accountability, oversight and management of State EBT systems. State agencies will need to provide data in a format established by FNS to the FNS Account Management Agent. This proposed requirement is specified in section 274.12(k)(2)(iii).

Management and Reporting

In order to take advantage of the extensive audit trail available in EBT systems, FNS has designed and implemented the Anti-fraud Locator for EBT Redemption Transaction (ALERT) system to collect and examine EBT transaction data for the purpose of detecting and investigating retailer fraud and abuse. In support of the system, State agencies will need to provide retailer transaction data to FNS on a monthly basis in accordance with the format specified by FNS. The standardized format was developed in consultation with EBT processors. This provision would replace the current requirement specified in 7 CFR 274.12(k)(2)(ii) for EBT exception reports.

Federal Financial Participation

Current regulations at 7 CFR 274.12(l)(2) indicate that State agencies can receive enhanced funding for development of EBT systems that are fully integrated components of the State's complete automated data processing (ADP) system. This enhanced funding has not been available for ADP development since the April 1, 1994 enactment of Public Law 103–66 amending the FSA. Therefore, this provision has been removed.

Back-up System

Current regulations at 7 CFR 274.12(m) require the State agency to ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. Electronic store-and-forward transactions are available to retailers in commercial debit systems and are preferable to manual vouchers for some retailers who do not wish to spend time obtaining telephone authorization for the transaction when the system is down. This type of transaction is stored in the POS device with an encrypted PIN and sent to the host at a later point in time. Several operational EBT States obtained FNS approval to incorporate this into their system. In keeping with this policy, the Department is proposing to allow use of a store-and-forward alternative for those retailers who elect to assume liability for these transactions. In order to protect against applying the transaction to future

months' benefits, the retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from the point when the system resumes operation. In an instance where the store and forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. The balance of this transaction could not be re-presented in future months.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented no later than 180 days after publication of the final rule.

List of Subjects in 7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR part 274 is proposed to be amended as follows:

PART 274—ISSUANCE AND USE OF COUPONS

1. The authority citation for 7 CFR part 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 274.12,

a. the first sentence in paragraph (b)(1) is amended by adding the words ''for development and implementation of initial and subsequent EBT systems'' at the end;

b. paragraph (b)(4) is amended by removing the first sentence;

c. paragraphs (c)(1) and (c)(2)(i) are revised;

d. paragraph (c)(2)(ii) is removed, and paragraphs (c)(2)(iii) through (c)(2)(vii) are redesignated as paragraphs(c)(2)(ii) through (c)(2)(vi), respectively;

e. newly redesignated paragraph (c)(2)(ii)(B) is amended by removing the semicolon at the end of the second sentence and adding a period in its place and by adding a sentence to the end of the paragraph;

f. the first sentence of newly redesignated paragraph (c)(2)(iii) following the paragraph heading is revised;

g. paragraph (c)(4)(i) is revised and paragraph (c)(5) is removed;

h. paragraph (d) is revised;

i. paragraph (f)(4)(v) is amended by removing the words ''24 hours'' and adding in their place the words ''48 hours'';

j. paragraphs (f)(4)(vi) and (f)(4)(vii) are revised;

k. a new paragraph (f)(4)(viii) is added;

l. the first sentence in paragraph (g)(3)(iii) is revised;

m. paragraphs (g)(5)(i) and (g)(5)(ii) are revised;

n. the first sentence in paragraph (g)(6)(ii) is amended by removing the word ''pilot'' and adding in its place the word ''project'';

o. paragraph (g)(10)(ii) is removed, and paragraphs (g)(10)(iii) through (g)(10)(viii) are redesignated as paragraphs (g)(10)(ii) through (g)(10)(vii), respectively;

p. newly redesignated paragraph (g)(10)(v) is amended by adding a sentence after the first sentence;

q. the last two sentences of paragraph (h)(1)(ii) are removed;

r. paragraph (h)(2) is revised, and paragraph (h)(4)(ii)(D) is amended by adding a sentence to the end of the paragraph;

s. the second sentence of paragraph (i)(5)(i) is amended by removing the word ''publish'' and adding in its place the words ''make available to third party processors'';

t. paragraphs (i)(6)(i), (j)(1)(iii), and (k)(2)(ii) are revised, and paragraph (k)(2)(iii) is added;

u. paragraph (l)(2) is removed, and paragraphs (l)(3) through (l)(5) are redesignated as paragraphs (l)(2) through (l)(4), respectively;

v. paragraph (m) introductory text is revised.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(c) * * * (1) *EBT planning APD.* The State agency shall comply with the two-stage approval process for APDs in submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(2) * * *

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in paragraph (f) of this section in combination with the system components described by the approved System Design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the Functional Demonstration if one is conducted.

(ii) * * *

(B) * * * FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

* * * * *

(iii) * * * The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. * * *

* * * * *

(4) *Pilot project reporting.* (i) The State agency is required to report to FNS all issues that arise during the pilot or shakedown period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than one month after completion of pilot operations.

* * * * *

(d) *Expansion requirements.* The pilot and expansion schedule must be delineated in the State agency's approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the three-month analysis and reporting, however, expansion can occur simultaneously with pilot operation. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require that roll-out be suspended until such problems are resolved.

* * * * *

(f) * * *

(4) * * *

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(vii) Provide on-line access to State EBT systems for compliance investigations. The State agency may be required to deploy administrative terminals to FNS Compliance Branch Area offices, Regional offices and Field

offices so that FNS compliance investigators, other appropriate FNS personnel and investigators from the Department's Office of Inspector General have access to the system in order to conduct investigations of program abuse and alleged violations;

(viii) Ensure that FNS compliance investigators and investigators from the Department's Office of Inspector General have access to EBT cards and accounts that are updated as necessary to conduct food stamp investigations.

(g) * * *

(3) * * *

(iii) Identify the food stamp household member's account number (the PAN) using a truncated number or a coded transaction number. * * *

* * * * *

(5) * * *

(i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(ii) In general, the State agency shall replace EBT cards within two business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

* * * * *

(10) * * *

(v) * * * This shall include the statement of non-discrimination found in Departmental Regulation 4300–3 (available from USDA, Office of Civil Rights, Room 326–W, Whitten Building, Washington, DC 20250). * * *

* * * * *

(h) * * *

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. State agency may choose to charge retailers reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

* * * * *

(4) * * *

(ii) * * *

(D) * * * State agencies may provide retailers with additional terminals beyond the number of lanes in a store at customer service booths or other locations if appropriate.

* * * * *

(i) * * *

(6) * * *

(i) The address of the office where a card can be returned if found or no longer in use should be printed on the card.

* * * * *

(j) * * *

(1) * * *

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the Automated Standard Application for Payment (ASAP) system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and U.S. Treasury;

* * * * *

(k) * * *

(2) * * *

(ii) State agencies must provide retailer transaction data to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(iii) Data detailing by specified category the amount of food stamp benefits issued or returned through the EBT system shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the food stamp EBT benefit funding authorization for the State's ASAP account.

* * * * *

(m) *Re-presentation.* The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible. As an alternative to manual transactions, State agencies may allow retailers, at the retailer's option and liability, to perform store-and-forward transactions when the system is down. The retailer would be able to forward the transaction to the host one time within 24 hours of when the transaction occurred. If the system is inoperable for more than a 24 hour period, the retailer would have 24 hours from when the system resumes operation. In instances where the store-and-forward transaction is denied due to insufficient funds, the retailer could re-present for the balance in the account. This transaction could not be re-presented in future months.

* * * * *

Dated: July 2, 2001.

Eric M. Bost,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 01–17212 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR PART 20

RIN 3150–AG25

Revision of the Skin Dose Limit

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to delete a reference to averaging over 1 square centimeter from its definition of shallow-dose equivalent (SDE). In addition, the proposed rule would change the method of calculating SDEs by specifying that the assigned SDE must be the dose averaged over the 10 square centimeters of skin receiving the highest exposure. A result of this rulemaking is to make the skin dose limit less restrictive when small areas of skin are irradiated and to address skin and extremity doses from all source geometries under a single limit. This change would permit measuring or calculating SDEs from discrete radioactive particles (DRPs) on or off the skin, from very small areas (< 1.0 square centimeters) of skin contamination, and from any other source of SDE by averaging the measured or calculated dose over the most highly exposed, contiguous 10 square centimeters for comparison to the skin dose limit of 50 rem (0.5 Sv).

DATES: Submit comments by September 25, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to

ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Website at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, may be examined in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may be viewed and downloaded electronically via the rulemaking Website. The regulatory analysis and the environmental assessment may be accessed via the NRC's Agencywide Documents Access and Management System (ADAMS) on the internet at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Obtain single copies of the environmental assessment and the regulatory analysis from Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883, e-mail: *AKR@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883, e-mail: *AKR@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

With the installation in the mid and late 1980s of very sensitive portal monitors, many nuclear power plants detected contamination of individuals and their clothing by small, usually microscopic, highly radioactive beta or beta-gamma emitting particles having relatively high specific activity. These particles, known as ''discrete radioactive particles'' (DRPs) and sometimes ''hot particles,'' most commonly contain ^{60}Co or fission products. DRPs apparently become electrically charged as a result of radioactive decay and, therefore, tend to be fairly mobile. DRP movement in the workplace is unpredictable and thus worker contamination is difficult to control. A unique aspect of DRPs on or very near the skin is that very small amounts of tissue can be exposed to large, highly nonuniform doses. These intense localized irradiations may produce deterministic effects, such as reddening of the skin, transient breaks in the skin or necrosis of small areas of the skin.

In the late 1990s, reports of DRP exposures by a materials licensee were made when workers were exposed to DRPs while manufacturing radiographic sources. In addition to the DRP concern, several events have occurred involving very small areas (< 1. 0 square centimeters) of skin contamination, primarily in the handling of solutions of highly concentrated radiopharmaceuticals. These contamination events produce relatively large doses to very small areas of skin, resulting in an insignificant health detriment. Under existing provisions in NRC regulations, several of these contamination events have resulted in overexposures, as well as enforcement actions, with the result that workers could not be assigned work in radiation areas for the balance of the year. The consequences of these overexposures were not commensurate with the actual health detriment.

The principal stochastic risk associated with irradiation of the skin is non-melanoma skin cancer, that is, basal cell and squamous cell skin cancers. The risk of skin cancer following irradiation of the skin by DRPs, or from very small areas of contamination, is not comparable to irradiation of extended areas of the skin because of the very small number of cells involved and the greater potential for high local beta particle dose to kill cells rather than cause transformation to a precancerous stage. The Congressionally-chartered National Council on Radiation Protection and Measurements (NCRP) in Report No. 106, Limit for Exposure to ''Hot Particles'' on the Skin (1989), conservatively estimated the risk of skin cancer following a DRP dose of 50 rem (0.5 Sv) to an area of 2 mm^2 to be 7 x 10^{-7} Gy^{-1} (7×10^{-9} rad^{-1}), and the risk of skin cancer mortality to be about 1×10^{-9} Gy^{-1} (1×10^{-11} rad^{-1}). Because the risk of stochastic effects (i.e., cancer) from gamma and beta radiation from DRPs has been shown to be negligible for DRP exposures to the skin, induction of skin cancer is of less concern than the potential for deterministic effects.

In 1991, the NRC revised 10 CFR part 20 and its occupational dose limit for the skin of the whole body to 50 rem (0.5 Sv) SDE per year to prevent deterministic effects (56 FR 23360; May 21, 1991) that might result from a lifetime exposure at the dose limit. This dose limit for the skin is in 10 CFR 20.1201(a)(2)(ii) and is intended to prevent damage to areas of the skin that are large relative to areas exposed by DRPs, on the skin, and that could compromise skin function or appearance. The NRC noted in that rulemaking that certain issues ''are being resolved in other rulemaking proceedings because of either their scope, complexity, or timing.'' One of the issues that was listed concerned limits and calculational procedures for dealing with the DRP issue. It was recognized that the current skin dose limit was overly conservative for DRP doses and SDE to very small areas of the skin. The final rule stated that there would be a rulemaking to set limits for skin irradiation by DRPs. This proposed amendment to Part 20 responds, in part, to that commitment.

The existing Part 20 skin dose limit of 50 rem (0.5 Sv) averaged over 1 cm^2 is intended to apply to a relatively uniform dose to a larger area of skin than that usually exposed by DRPs and was intended to prevent deterministic damage to the skin. Because this limit was considered by the NCRP to be overly conservative for DRPs on or very near the skin, the NRC announced an interim enforcement discretion policy in Information Notice (IN) 90–48, ''Enforcement Policy for Hot Particle Exposures'' (55 FR 31113, July 31, 1990), that addressed reporting and mitigation if a DRP dose exceeded the existing 50 rem over 1 cm^2 limit, and enforcement action for overexposures would be taken if the DRP beta emission exceeded 75 μCi-hrs (300–500 rads). To avoid DRP doses greater than 50 rem (0.5 Sv) and the resulting reporting requirement, licensees monitor workers frequently during the work shift for DRP contamination. This results in additional external dose either to the workers, who incur additional exposure time in exiting and reentering the restricted area, or to the radiation protection staff, who must enter the restricted area to perform the monitoring.

In 1988, the NRC contracted with Brookhaven National Laboratory (BNL) to study the health effects of DRPs on the skin and initiated a contract with the NCRP to develop guidance on controlling DRP doses. In NUREG/CR–6531, ''Effects of Radioactive Hot Particles on Pig Skin,'' June 1997, BNL provided data on the probability of producing breaks in the skin from irradiation of the skin by DRPs in contact with or near the skin and

demonstrated that these effects would not pose any serious health problems to workers. On the basis of the BNL data, and many other reported studies and similar experiments performed by the Electric Power Research Institute (EPRI) and reported on in EPRI TR–104781, ''Skin Injuries From Discrete Radioactive Particles,'' (1994) the NCRP recommended in Report No. 130, ''Biological Effects and Exposure Limits for ''Hot-Particles,'' (1999) a dose-limiting guideline for DRPs of 50 rads (0.5 Gy) averaged over the most highly exposed 10 square centimeters. The BNL work only examined the nonuniform, highly concentrated dose to 1 square centimeter from DRPs in contact with or near the skin and not the dose that would be delivered to the adjacent skin tissue.

In October 1998, the NRC staff submitted a rulemaking plan (SECY–98–245) entitled ''Protection Against Discrete Radioactive Particle (DRP) Exposures (10 CFR part 20).'' The NRC staff proposed establishing a constraint of 300 rads (3 Gy) over 1 cm^2 as a program design guideline or action level, and a limit of 1000 rads (10 Gy) per 1 cm^2 for DRPs on or near the skin. The existing skin dose limit would have been retained for all other skin doses. The intent of that proposed amendment was to reduce the additional external dose incurred by workers in monitoring for DRPs during work shifts and to reduce unnecessary regulatory burden by adopting more realistic thresholds for DRP dose control and reporting requirements. In a staff requirements memorandum (SRM) dated December 23, 1998, the Commission directed the NRC staff to proceed with rulemaking as proposed, but to use 500 rads (5 Gy) per 1 cm^2 as the dose limit to be consistent with the NCRP recommendations in NCRP Report No. 106.

In March 1999, several industry experts who had reviewed the publicly available rulemaking plan and SRM suggested that the planned action would not accomplish one of the intended objectives of the proposed rulemaking, that is, to reduce the frequency of worker monitoring. The following industry concerns were raised arguing against use of a DRP dose constraint with a 500-rem (5.0 Sv) limit and supporting use of the NCRP recommended skin dose limit that is proposed in this rule: Of all DRP events, fewer than 10 percent are on, or near enough to, the skin for the proposed constraint and limit to apply. Most DRP events (>90 percent) are DRPs on clothing, on hair, or are far enough away from the skin (and most likely moving) so that the dose to the skin is more uniform and is spread over a larger area. In that case the existing 50-rem (0.5 Sv) skin dose limit would be applicable. This information suggested that a reduction in DRP monitoring frequency, and the associated external dose, could not be realized for most DRP exposures, because of the need to prevent exceeding the existing skin dose limit. Because the licensee may not know in advance whether the DRP is on the skin or moving the licensee would need to assume that the existing skin dose limit was applicable.

The justification for proposing a constraint, or action level, of 300 rads (3.0 Gy) over 1 cm^2 was in large part to reduce the additional external dose incurred by plant staff from frequent monitoring to avoid having to report a DRP dose that exceeded the existing 50-rem (0.5 Sv) skin dose limit. If more than 90 percent of DRPs are off the skin and irradiating a relatively large area, the existing skin dose limit would be controlling and the constraint would only rarely be used. The NRC staff concluded that little relief from monitoring dose would result from implementing the constraint and the 500 rad (5 Gy) limit. In a memorandum to the Commission dated October 27, 1999 (COMSECY–00–0009) the staff explained why the constraint with a limit of 500 rads (5 Gy) would not accomplish this intended objective, and recommended further staff work to identify an effective regulatory approach. In an SRM dated March 16, 2000, the Commission directed the staff to contract with the NCRP to provide additional technical support on this issue.

In December 1999, the NCRP had published Report No. 130, ''Biological Effects and Exposure Limits for ''Hot Particles.'' The NCRP recommended that the dose to skin at a depth of 70 μ (7 mg/cm^2) from hot particles on skin (including the ear), hair, or clothing be limited to no more than 50 rads (0.5 Gy) averaged over the most highly exposed 10 cm^2 of skin.

The averaging area of 10 cm^2, recommended by the NCRP, would permit treating both the case when a DRP is on the skin or a very small area of skin is contaminated, and the case when a DRP is on clothing and moving about exposing an area on the order of 10 cm^2 or more. In the former case, averaging the very localized dose over 10 cm^2 results in a dose value that more appropriately reflects the risk associated with a small area exposure. In the latter case, averaging relatively uniform dose to the entire 10 cm^2, results in an dose limit that is equivalent to the current 50 rem over 1 cm^2. Thus the limit decreases as the exposed skin area increases to 10 cm^2, consistent with the expectation that the risk of an effect increases with increasing area of skin exposed to a given dose level. This averaging area is also consistent with the skin dose limiting system adopted by the Department of Energy in 10 CFR part 835.

In an effort to find the least burdensome regulatory requirement for controlling DRP doses, as well as other skin doses, while maintaining an adequate level of worker protection, the NRC staff requested the NCRP to consider the advisability of applying its proposed limit for DRP exposures to all skin dose geometries. In March 2001, the NCRP published Statement No. 9, ''Extension of the Skin Exposure Limit for Hot Particles to Other Sources of Skin Irradiation.'' The statement can be found on the NCRP website at *www.ncrp.com/statemnt.html.* In this statement, the NCRP recommended that the absorbed radiation dose to skin at a depth of 70 μm (7 mg/cm^2) from any source of irradiation be limited to 50 rads (0.5 Gy) averaged over the most highly exposed 10 cm^2 of skin.

Dr. John Baum, Ph.D., an NRC consultant, reviewed the health effects implications of the NCRP recommendation. Dr. Baum wrote a technical paper that was published in the June 2001 issue (pp. 537–543) of the peer-reviewed journal, Health Physics, entitled ''Analysis of Potential Radiobiological Effects Related to a Unified Skin Dose Limit.'' In this paper, the probabilities and severity of both stochastic and deterministic risks were estimated by Dr. Baum for a wide range of exposure scenarios based on the research done at Brookhaven National Laboratory, at other research facilities, and on additional information found in NCRP Reports Nos. 106 and 130. Published data from experimental and epidemiological studies, as well as calculations of radial-and depth-dose distributions, show that skin exposures at the dose limit of 50 rem (0.5 Sv) of SDE averaged over 10 cm^2 could result in stochastic risks of $<3.3 \times 10^{-7}$ fatal skin cancers and $<1.6 \times 10^{-4}$ nonfatal skin cancers, confirming that stochastic risks at the proposed limit are small.

Given exposures at the proposed skin dose limit, i.e., 50 rem (0.5 Sv) averaged over 10 square centimeters, the worst case deterministic effects were estimated by Dr. Baum to be a 5 percent probability of erythema if all of the dose (500 rem) were delivered to an area of 2.5 cm^2, and a 50 percent probability that measurable dermal thinning would be observable if all of the dose were delivered to an area <0.5 cm^2. At this

dose, no acute cell killing or skin ulceration was predicted for DRPs 3 or more mm off of the skin because the dose is distributed over too large an area. The worst case probability of producing a barely detectable scab due to acute cell killing was estimated at 10 percent for ^{60}Co or activated fuel DRPs located about 0.4 mm off the skin. A copy of this copyrighted article is available for viewing during the public comment period for this rulemaking at NRC's Public Document Room located in Rockville, MD.

Additional discussion of implications of the health effects associated with the proposed unified skin dose limit can be found in the regulatory analysis developed for this rulemaking.

II. Summary and Discussion of the Proposed Changes

The Commission is proposing to amend § 20.1003, § 20.1201(a)(2)(ii), and § 20.1201(c).

Section 20.1003—Definitions

In § 20.1003 Definitions, the definition of shallow-dose equivalent would be revised to delete the words ''averaged over an area of 1 square centimeter.'' The purpose of these words was to specify the area over which the dose to the skin was to be measured or calculated for comparison to the limit. The proposed revision to permit averaging over 10 square centimeters for measuring and recording SDE would be found in § 20.1201(c), along with other procedural requirements.

Section 20.1201—Occupational Dose Limits for Adults

Section 20.1201, Occupational Dose Limits for Adults, would be changed in two places. Section 20.1201(a)(2)(ii) would be changed to make it clear that the SDE limit of 50 rem (0.5 Sv) is the dose limit to the skin of any extremity as well as the skin of the whole body. The Commission believes that this specification makes it clear that the only dose limit for the extremities is a SDE limit on the dose delivered at a depth of 0.007 cm (7 mg/cm^2), not a deep dose limit.

Section 20.1201(c) would be amended to specify that the assigned SDE must be the dose averaged over the 10 contiguous square centimeters of skin receiving the highest exposure. This is the significant change proposed in this rulemaking.

Note that the NCRP made recommendations regarding limiting dose from DRPs in the ear and on the eye. The NRC staff believes that these are special cases only with respect to measuring or calculating the dose, and that the proposed skin dose limit, and the existing limit for dose to the lens of the eye, are adequate to control DRP doses to these areas.

It is also important to note that it had been considered relevant to distinguish between doses from DRPs that were on or off the skin. With the proposed rule, this distinction is only relevant to dosimetric consideration, and the proposed limit is independent of source or exposure geometry.

The NRC staff has elected to retain the units rem and Sievert for the skin dose limit. According to data published in reports of the International Commission on Radiation Protection, the unit for dose equivalent, rem (Sv) is acceptable for deterministic effects, especially at lower doses. The highest Relative Biological Effectiveness (RBE) values for deterministic effects in the skin are all less than the Q values, or dose weighting factors that are used to convert dose in rads (Gy) to dose equivalent in rem (Sv). The use of dose equivalent in units of rem (Sv) would be conservative and would have the advantage that all of the dose limits would be in the same units. The Department of Energy, in its regulations, uses the rem and Sievert for SDE.

NCRP Statement No. 9 referred to NCRP Report No. 130 (NCRP 1999) for guidance on good practices, and recommended that in addition to numerical limits, observation of the exposed area of skin should be performed for four to six weeks whenever the DRP dose at a depth of 70 μm exceeds 10 rads (0.1 Gy) averaged over the most highly exposed 10 cm^2 of skin. The observational level of 0.1 Gy is well below the proposed limit of 0.5 Gy, and is essentially equivalent to the current skin dose limit, at which no clinically significant effects have ever been reported. For those reasons the NRC is not proposing to incorporate the NCRP recommendation into the proposed rule.

The objective of the rulemaking is to establish a uniform, risk-informed skin dose limit for all sources of SDE, including DRPs, and small area contamination that: trades a higher risk of occurrence of deterministic effects to the skin for a reduction in the risk of whole-body stochastic effects; allows licensees to reduce whole-body exposures and nonradiological health risks such as heat stress to workers subject to unnecessary DRP monitoring; and provides a common limit for SDE from all external sources of ionizing radiation. The proposed rule also reduces the unnecessary regulatory burden on licensees for reporting skin exposures that have insignificant health implications.

The current statement of the skin and extremity dose limit, along with the current definition of SDE, requires that skin doses be averaged over 1 square centimeter. The proposed rule would permit averaging the SDEs delivered to the 10 most highly exposed, and contiguous, square centimeters. It is important to discuss the consequences of this proposed change in the context of different source geometries.

In the case of large-area exposures of the skin from surface contamination or other external sources, areas on the order of 10 square centimeters or more would be likely to receive a relatively uniform dose. There is little difference to be expected in recorded doses from the current requirement that would attempt to identify the most highly exposed 1 square centimeter and the new approach that would sum the SDE to the 10 highest-exposed, adjacent square centimeters and divide by 10. The recorded doses would be identical for the large-area (10 square centimeters or more) exposures that form the great majority of skin dose events.

Under the proposed rule, exposed areas of the skin less than 10 square centimeters would be treated in a less restrictive manner. For example, a dose of 250 rem (2.5 Sv) to each of 2 square centimeters would result in a 50-rem (0.5 Sv) SDE when averaged over 10 square centimeters. A dose as high as 500 rem (5.0 Sv) would be permitted to 1 square centimeter and would be recorded as 50 rem (0.5 Sv) when averaged over 10 square centimeters. This change would effectively permit higher doses to small areas of skin than currently permitted by regulations.

Although, as previously noted, the Commission is proposing a skin dose limit that in some source geometries is likely to permit more frequent occurrence of observable though transient deterministic effects, it is expected that the less restrictive limit would permit a reduction in the conservative use of protective clothing and other devices intended to prevent contamination and skin doses. As a result, workers should experience reduced exposure to nonradiological health hazards such as heat stress, and be subject to fewer industrial accidents caused by impaired motion. By reducing the overly conservative use of protective equipment, work should be performed more efficiently. Reduced time in the restricted area is expected along with a concomitant reduction in whole-body dose and stochastic risks. The Commission intends this change to lead to a reduction in overly conservative

efforts to prevent skin contaminations, that will result in decreased stress and lower whole-body doses. Numerous studies of the impacts on worker efficiency and safety resulting from the use of protective clothing and equipment have been published in the journal, Health Physics, in Radiation Protection Management, and by the Electric Power Research Institute (EPRI). A recent discussion of this issue and specific references can be found in NUREG/CR–0041, ''Manual of Respiratory Protection Against Airborne Radioactive Material,'' January 2001.

A final geometry of interest is the case of DRPs on or very near the skin, such that a relatively small volume of tissue receives a large dose, resulting in cell killing and possible observable breaks in the skin. Under the current dose limit a DRP could deliver 50 rem (0.5 Sv) to an area of 1 square centimeter that when averaged over 1 square centimeter would yield a recorded dose of 50 rem (0.5 Sv). Under the proposed rule, the NCRP recommended limit, a dose of 500 rem (5.0 Sv) delivered to 1 square centimeter, when averaged over 10 square centimeters, would yield a recorded dose of 50 rem (0.5 Sv). Thus, for DRPs on the skin, and other small area exposures, the proposed rule change is in effect a tenfold relaxation of the current limit and might permit some increased number of observable, transient deterministic effects to the skin. This new limit would be approximately equivalent to the emission criterion of 75 μCi-hr in the interim enforcement policy stated in IN 90–48. The 500 rem (5.0 Sv) to 1 square centimeter (worst) case is estimated to result in a 50 percent chance of an observable but transient effect. NRC records include only one DRP dose that was calculated to exceed 500 rem (5.0 Sv), and no effects were observed in that case.

On the basis of extensive research performed at BNL and elsewhere, the NCRP stated in Report No. 130 that ''if exposures are maintained below the recommended limits, few, if any, deterministic biological effects are expected to be observed, and those effects would be transient in nature. If effects from a hot-particle exposure are observed, the result is an easily treated medical condition involving an extraordinarily small stochastic risk. Such occurrences would be indicative of the need for improvement in radiation protection practices, but should not be compared in seriousness to exceeding whole-body exposure limits.''

Reactor licensees are currently monitoring workers frequently during each work shift to prevent exceeding the interim 50-rem (0.5 Sv) reporting threshold for doses from DRPs. Industry estimated that up to 5 person-rem (0.05 person-Sv) of whole-body dose per outage could be attributed to this monitoring. Workers are either brought out of the workplace to be monitored, incurring nonproductive exit-entry dose, or technicians enter the restricted area to monitor workers for DRPs. The proposed, less restrictive, skin dose limit would eliminate the need to perform this DRP monitoring during work shifts for all but the highest activity DRPs[1], especially those having a high gamma component. The possibility of some additional number of observable deterministic effects, such as a small break in the skin, is considered by the NRC to be justified by the reduction of the whole-body dose and associated stochastic risks from monitoring for DRPs.

The Radiation Exposure Information Reporting System (REIRS) database includes reports of nearly 15,000 individual DRP doses since 1990. Fewer than 10 have exceeded the current 50-rem (0.5 Sv) reporting limit. It is unlikely that this proposed revision of the skin dose limit will result in any large increase in the number of DRP doses. The as-low-as-is-reasonably-achievable (ALARA) principle will continue to apply to any occupational doses, so the revised skin dose limit should not permit a large number of high DRP doses. It would be unacceptable for a licensee to permit large numbers of high DRP exposures on a continuing basis without attempting some mitigating procedures or engineering controls.

The Commission believes that the less restrictive limit on skin dose to small areas that might permit more observable, transient, deterministic effects will also result in a less hazardous workplace and reduced whole-body occupational dose. The Commission considers this tradeoff to represent a substantial increase in worker protection. This represents a shift in emphasis toward a risk-informed approach that would possibly permit more frequent deterministic effects in order to avoid the physical stress and whole-body doses associated with monitoring workers and the use of protective measures. The NRC is specifically soliciting comments on the acceptability of this approach.

[1] For example, one recent event at a nuclear power plant involved a CO–60 DRP with an activity of about 75 mCi. The deep-dose equivalent estimated from this particle (had it been on the skin) was calculated to be about 10 rem/hr per mCi. For particles in this activity range, the deep-dose equivalent (DDE) limit of 5 rem per year can be exceeded in less than 1 minute. The proposed skin dose limit could be exceeded in even less time.

III. Issue of Compatibility for Agreement States

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'', which became effective on September 3, 1997 (62 FR 46517), NRC program elements, including regulations, are assigned compatibility categories. In addition, NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC.

Compatibility Category A includes those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis.

Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.

Compatibility Category C includes those program elements that do not meet the criteria of Category A or B but represent essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements.

Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C above and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) includes program elements that are not required for compatibility (i.e., Category D) but that have been identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this category that embody the essential objectives of the NRC program elements because of particular health and safety considerations.

Compatibility Category NRC includes those program elements that address

areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act (AEA) or provisions of Title 10 of the Code of Federal Regulations. These program elements should not be adopted by Agreement States.

The proposed modifications to §§ 20.1003 and 20.1201, which contain definitions and basic radiation protection standards that are necessary to understand radiation protection concepts, are designated as compatibility Category A. Therefore, the Agreement State program element should be essentially identical to NRC's in order to provide uniformity in skin dose determinations on a nationwide basis.

These proposed amendments were provided to the Agreement States via the NRC Technical Conferencing Forum. As of 5/24/01, only one comment had been received from the States.

IV. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading of the preamble.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is modifying its definition of Shallow-dose equivalent. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Environmental Assessment: Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

An environmental assessment has determined that the proposed amendment addresses technical and procedural improvements in the provisions for determining by measurement or by calculation the dose to the skin for comparison to the skin dose limit for the whole body or for the extremities. None of the impacts associated with this rulemaking have any effect on any places or entities outside of a licensed site. An effect of this proposed rulemaking is expected to be a decrease in the use of protective equipment used by nuclear power plant workers and others potentially exposed to skin contamination, to prevent the skin contaminations. No changes are expected in licensee programs and procedures designed to mitigate the production and spread of DRPs in the workplace and to prevent the unauthorized release of radioactive materials off site. It is expected that there would be no change in radiation dose to any member of the public as a result of the revised regulation. The proposed amendment is expected to result in a reduction in external occupational dose to workers onsite.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation. The NRC has also committed to complying with Executive Order (E.O.) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income populations,'' dated February 11, 1994. The NRC evaluated environmental justice for this environmental assessment and has determined that there are no disproportionate high and adverse impacts on minority and low-income populations. In the letter and spirit of E.O. 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow were not addressed. E.O. 12898 describes environmental justice as ''identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.'' Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

The draft environmental assessment is available for inspection at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of this document are available as indicated in the **ADDRESSES** heading.

VII. Paperwork Reduction Act Statement

This proposed rule would decrease the burden on licensees reporting under Section 20.2202(b)(iii) on DRP and other small area skin overexposures. The public burden for this information collection is estimated to average 40 hours per request. Fewer than 10 reports have been received by the NRC over the past 12 years. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0114.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The NRC has prepared a regulatory analysis for the proposed amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of the analysis are available as indicated in the **ADDRESSES** heading.

The Commission requests public comment on the analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities. The anticipated impact of the proposed changes would not be significant because the revised regulation basically represents a continuation of current practice. The benefit of the proposed rule is that it would permit averaging doses to the skin over the most highly exposed 10 square centimeters, incorporate an NCRP recommendation

for a less restrictive skin dose limiting procedure, and permit reduced use of protective equipment known to expose workers to workplace stresses and unnecessary whole-body radiation dose.

The NRC is seeking public comment on the initial regulatory flexibility certification. The NRC is seeking comment particularly from small entities as defined under the NRC's size standards in 10 CFR 2.810 as to how the proposed regulations would affect them and how the regulations may be implemented or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Any small entity subject to this regulation that determines that because of its size it is likely to bear a disproportionate adverse economic impact should offer comments that specifically discuss the following items:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to implement this amendment could be more effectively used in other ways to optimize public health and safety, as compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensees' differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemaking and Adjudications Staff. Hand-deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

X. Backfit Analysis

Although the NRC has concluded that the changes being proposed constitute a reduction in unnecessary regulatory burden, the implementation of these changes will require revisions to licensee procedures, thereby constituting a potential backfit under 10 CFR 50.109(a)(1). Under § 50.109(a)(2), a backfit analysis is required unless the proposed rule meets one of the exceptions listed in § 50.109(a)(4). This proposed rule meets the exception at § 50.109(a)(4)(iii) in that it is redefining the level of adequate protection embodied in the occupational dose limit for doses to the skin of the whole body and to the skin of the extremities. In addition, the implementation of this proposed rule is expected to result in a substantial increase in worker industrial safety.

Section II, Summary and Discussion of the Proposed Changes, discusses the proposed changes to the definition of shallow-dose equivalent (SDE) and the provision for averaging SDE over the most highly exposed 10 square centimeters. This change would, in effect, raise the skin dose limit for discrete radioactive particles (DRPs) on or near the skin and for small-area (<1.0 cm^2) contaminations. This revision makes it possible for licensees to measure or calculate skin doses for comparison to the 50-rem (0.5 Sv) limit that when divided by 10, result in dose values according to NCRP that more appropriately reflect the risk associated with small area exposures. The increased limit in the case of DRPs will remove the need to frequently monitor workers for DRP contamination during work shifts for all but the highest activity DRPs, especially those having a high gamma component. This reduced monitoring will eliminate most of the whole-body dose and stochastic risk associated with monitoring performed to avoid exceeding the current more restrictive skin dose limit. In addition, the relaxed skin dose limit, based on NCRP recommendations, should make it clear that the consequences of transient skin contamination are less significant than the radiological and nonradiological risks incurred by workers as a result of licensee efforts to avoid skin contaminations. The overly conservative use of multiple layers of protective clothing and other devices worn to prevent skin contamination cause exposure to nonradiological hazards such as heat stress, as well as a reduction in worker efficiency estimated by industry to be as much as 15–25 percent which, in turn, increases whole-body dose. Licensees will be able to choose to use less protective gear at the cost of more frequent skin contamination, but with the benefit of less physical stress and reduced whole-body dose to workers.

In conclusion, the Commission believes that the proposed changes constitute a reduction in unnecessary regulatory burden that redefines the level of adequate protection and that should result in a substantial increase in worker safety. The proposed changes are therefore the type of change for which a backfit analysis is not required under § 50.109(a)(4)(iii).

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recording requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003 the definition of *Shallow-dose equivalent (H_s)* is revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Shallow-dose equivalent (H_s), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm_2).

* * * * *

3. In § 20.1201 the introductory text of paragraph (a)(2), and paragraphs (a)(2)(ii) and (c) are revised to read as follows:

§ 20.1201 Occupational dose limits for adults.

(a) * * *

(2) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

* * * * *

(ii) A shallow-dose equivalent of 50 rem (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

* * * * *

(c) The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent must

be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens-dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

* * * * *

Dated at Rockville, Maryland, this 6th day of July, 2001.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 01–17448 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that currently requires repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That amendment also requires modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. This proposed action would add repetitive inspections and would require replacement of the current preventive modification with an improved modification. This proposal is prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints do not provide an adequate level of safety. The actions specified by the proposed AD are intended to find and fix cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 98–NM–196–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–196–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to certain Boeing Model 737 series airplanes, to require repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. That action also adds a requirement for modification of the fuselage lap joints at certain locations, which constitutes terminating action for repetitive inspections of the modified areas. That action was prompted by reports of numerous fatigue cracks in the lower skin of the fuselage lap joints at the lower row of fasteners. The requirements of that AD are intended to prevent such fatigue cracking, which could result in sudden decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–22–07, the FAA has received additional reports of fatigue cracking in the lower skin of the lap joints of the fuselage on Model 737 series airplanes that had accumulated between 57,000 and 84,400 flight cycles, and were previously inspected per that AD. Further investigation revealed additional cracking in various areas of the skin lap joints at the fastener locations that initiated away from the edge of the fastener hole in multiple locations. The majority of these cracks occurred at left and right stringers 4, 10, and 14. The

FAA finds that this damage can occur at those stringer locations between 40,000 and 50,000 flight cycles. These cracks are not always detectable using the open hole eddy current inspection procedures and can link up with adjacent cracks causing multiple site damage. In addition, cracking has been found in the window corners adjacent to the lap joints on certain airplanes.

Based on these findings, the FAA has determined that the current inspection procedures specified in AD 97–22–07 are not adequate for detection of cracks in these locations, and that the preventive change that was required by that AD does not guarantee crack removal. Therefore, the FAA finds that additional rulemaking is necessary to require additional inspections for cracking, removal of the preventive change, and accomplishment of a lap joint modification.

Public Meeting

A joint Federal Aviation Administration (FAA) and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from air carriers and repair stations, as well as Principal Maintenance Inspectors (PMI) from FAA's Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain supplemental type certificates presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. In addition, minutes of the public meeting are retained in the docket.

Other Relevant Proposed Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Replacement of certain repairs with improved repairs in certain fuselage lap joints done per the procedures described in the structural repair manual (SRM); and a high frequency eddy current inspection to find cracking of the SRM repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found on Model 737 series airplanes, line numbers 292 through 2595 inclusive. And
- Repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and a lap joint modification of Model 737–200 and –200C series airplanes, line numbers 1 through 291 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for the following:

- Removal of the existing preventive modification and the installation of an improved lap joint cutout repair, which eliminates the need for certain repetitive inspections;
- Repetitive low frequency eddy current (LFEC) inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking;
- Post-mod inspections, installation of a lap joint repair, and follow-on LFEC inspections;
- Modification of the tearstrap splice straps; and
- Repetitive high frequency eddy current inspections of the fastener holes of the window corner of the lap joint area, and repair of any cracking.

The service bulletin also specifies contacting the manufacturer for accomplishment of certain repairs. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–22–07 to continue to require repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. This proposed AD would add repetitive inspections, adjust inspection thresholds, and require an improved modification. Accomplishing the improved modification would terminate the inspections required by the existing AD. In addition, this proposed AD would require inspections of some airplanes on which the ''Preventive Change'' (NACA modification) specified in AD 97–22–07 already had been accomplished. This proposed AD also would require inspections following accomplishment of the improved modifications, and would require tear strap splice conditions for airplanes on which lap joints previously had been repaired per AD 97–22–07. This proposed AD also would require inspections on some airplanes in window corners in areas already being inspected per AD 91–07–04, amendment 39–6933 (56 FR 11355, March 18, 1991), on other airplanes. The actions would be required to be accomplished per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (f) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

Operators also should note that, in light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only Model 737 series airplanes having line numbers (L/N) 292 through 2565 inclusive.

Paragraph (m) of this AD addresses only Model 737 series airplanes having L/N 520 through 2565 inclusive for accomplishment of the HFEC inspection to find cracking of the window corner fastener holes. Model 737 series airplanes having L/N 1 through 519 inclusive were addressed in AD 91–07–04, amendment 39–6933. That AD requires ultrasonic and high frequency eddy current inspections for delamination of window belt skin doubler from fuselage skin.

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

Cost Impact

There are approximately 2,203 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 905 airplanes of U.S. registry would be affected by this proposed AD.

Cost estimates for the actions required by this proposed AD for U.S. operators over the life of the AD are included in the following table:

Paragraph/AD action	Number affected	Work Hours	Parts ($)	Cost/airplane ($)	Total cost ($)
(a) Lap joint inspection	905	100	0	6,000	5,430,000
(f) Compliance planning	905	24	0	1,440	1,303,200
(g) Lap joint modification	905	4,200	12,000	264,000	238,920,000
(h) Lap joint inspection	905	100	0	6,000	5,430,000
(i) Post-NACA inspection	25	100	0	6,000	150,000
(j) Post-NACA inspection	10	100	0	6,000	60,000
(m) Window corner inspection	807	14	0	840	677,880

The cost estimates are based on the following criteria:

- Lap joint inspection cost estimates reflect costs for a single inspection cycle, and the work hours vary between groups of airplanes. Refer to paragraph 1.G. of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 100 work hours was used in determining the cost estimates.
- An average of 24 work hours was used in estimating the costs for compliance planning.
- Lap joint modification work hours vary between groups of airplanes. Refer to paragraph 1.G of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 4,200 work hours and $12,000 for parts were used in estimating these costs. Modification costs are spread over the estimated life of the AD, which is approximately 20 to 25 years.
- Window corner inspection work hours vary between groups of airplanes. Refer to paragraph 1.G of Boeing Service Bulletin 737–53A1177 for more detailed information. An average of 14 work hours was used in estimating the costs of the inspections only.

The FAA estimates that during the 10-year period after issuance of the proposed AD, worldwide operators would be required to modify 805 Model 737 series airplanes. The new modification required by the proposed AD would take an average of approximately 4,200 work hours to accomplish, at an average labor rate of $60 per work hour. The worldwide cost impact of the required modification is estimated to be $212,701,000 over 10 years, or an average of $21,270,000 per year. The highest impact year is the third year after issuance of the AD: an estimated 155 Model 737 series airplanes would require modification in that year. Therefore, the worldwide cost impact of the modification is estimated to be $40,955,000 in that year. The affected Model 737 airplanes operated by U.S. operators comprise approximately 41 percent of the total worldwide costs. Therefore, the highest cost impact in any given year for the modifications is estimated to be $16,791,000 for U.S. operators.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10179 (62 FR 55732, October 28, 1997), and by adding

a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–196–AD. Supersedes AD 97–22–07, amendment 39–10179.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes having line numbers 292 through 2565 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 per paragraph (n) 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 find and fix cracking of certain fuselage lapjoints, which could result in sudden decompression of the airplane, accomplish the following:

Repetitive Low Frequency Eddy Current (LFEC) Inspections—Crown Areas

(a) Do an LFEC inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, per PART I (''Inspection'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; at the time specified in paragraph (b) or (c) of this AD, as applicable.

(b) For airplanes that have accumulated more than 65,000 total flight cycles but not more than 70,000 total flight cycles as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraphs (b)(1) and (b)(2) of this AD. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(1) Within 1,200 flight cycles after the effective date of this AD.

(2) Within 1,200 flight cycles after the last inspection, if any, accomplished in accordance with AD 97–22–07, amendment 39–10179.

(c) For airplanes that have accumulated at least 45,000 total flight cycles but not more than 65,000 total flight cycles as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraphs (c)(1) and (c)(2) of this AD. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(1) At the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Before the accumulation of 50,000 total flight cycles.

(ii) Within 1,200 flight cycles after the effective date of this AD.

(2) Within 1,200 flight cycles after the last inspection, if any, accomplished in accordance with AD 97–22–07, amendment 39–10179.

Crack Repair

(d) Except as provided by paragraph (e) of this AD: If any cracking is found during any inspection required by this AD, before further flight, repair per PART II (''Crack Repair'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(e) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, specifies to contact Boeing for repair instructions: Repair any cracking, before further flight, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Compliance Plan

(f) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (g) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, ''FAA'' means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Operators are not required to submit revisions to the compliance plan required by paragraph (f) of this AD to the FAA.

Lap Joint Modification (Repair)—Crown Areas

(g) Install the lap joint repair per PART III or IV (''Lap Joint Repair'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, as applicable; at the time specified in paragraph (g)(1), (g)(2), (g)(3), (g)(4), or (g)(5) of this AD, as applicable. Accomplishment of this repair terminates the repetitive inspections required by paragraphs (b) and (c) of this AD.

(1) For airplanes that have accumulated 70,000 total flight cycles or more as of the effective date of this AD: Within 600 flight cycles after the effective date of this AD, do the lap joint repair.

(2) For airplanes that have accumulated 65,000 total flight cycles or more, but less than 70,000 total flight cycles as of the effective date of this AD: Do the repair at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before the accumulation of 70,000 total flight cycles.

(ii) Within 600 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 45,000 total flight cycles or more, but less than 65,000 total flight cycles as of the effective date of this AD: Within 5,000 flight cycles after the effective date of this AD.

(4) For airplanes that have accumulated less than 45,000 total flight cycles as of the effective date of this AD: Before the accumulation of 50,000 total flight cycles.

(5) Notwithstanding the times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, for airplanes on which the ''Preventive Change'' has been accomplished per PART III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1177, Revision 3, dated September 18, 1997; (NACA modification): Within 18,000 flight cycles after accomplishment of the NACA modification.

Repetitive LFEC Inspections—Outside Crown Areas

(h) Before the accumulation of 70,000 total flight cycles, or within 2,500 flight cycles after the effective date of this AD, whichever comes later: Perform an LFEC inspection to find cracking of the lap joints of the fuselage; as identified in Figures 2 through 7 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Do the inspection per the service bulletin. Repeat the inspection after that at intervals not to exceed 5,000 flight cycles.

Post-NACA Modification Inspections—Crown Areas

(i) For airplanes that have the ''Preventive Change'' (NACA modification) of the crown lap joint stringers (''Crown Laps''): Within 12,000 flight cycles after accomplishment of the NACA modification, do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking and corrosion per PART I (''Inspection'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(1) If the external inspection is done: Repeat the inspection after that at intervals not to exceed 1,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

(2) If the internal inspection is done: Repeat the inspection after that at intervals not to exceed 4,500 flight cycles until accomplishment of the lap joint repair required by paragraph (g) of this AD.

Post-NACA Modification Inspection—Outside Crown Areas

(j) For airplanes that have the ''Preventive Change'' (NACA modification) outside the crown areas: Before the accumulation of 20,000 flight cycles after accomplishment of the NACA modification, do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking and corrosion per PART I (''Inspection'') of the Accomplishment Instructions of Boeing

Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(1) If the external inspection is done: Repeat the external inspection after that at intervals not to exceed 1,500 flight cycles.

(2) If the internal inspection is done: Repeat the internal inspection after that at intervals not to exceed 4,500 flight cycles.

Modification of Tear Strap Splice Straps

(k) For airplanes that have the ''lap joint repair,'' as specified in Part IV of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 2, dated July 24, 1997, or Revision 3, dated September 18, 1997: Within 45,000 flight cycles after accomplishment of this lap joint repair, modify the splice straps per Figures 10, 11, and 12 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

Follow-On LFEC Inspections

(l) Within 45,000 flight cycles after accomplishment of the lap joint repair required by paragraph (g) of this AD: Do either an external (Figure 8) or internal (Figure 9) LFEC inspection to find cracking of the lap joint repair, per PART I (''Inspection'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Repeat the inspection after that at intervals not to exceed 2,800 flight cycles.

Repetitive High Frequency Eddy Current (HFEC) Inspections—Window Corners

(m) For airplanes having line numbers 520 through 2565 inclusive: Before the accumulation of 50,000 total flight cycles or within 1,200 flight cycles after the effective date of this AD, whichever comes later, do a HFEC inspection to find cracking, per PART V (''Window Corner Fastener Hole Cracking, Inspection and Repair'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Repeat the inspection after that at intervals not to exceed 4,500 flight cycles. Accomplishment of the modification per Part V of the Accomplishment Instructions of the service bulletin constitutes terminating action for the inspections required by this paragraph.

Alternative Methods of Compliance

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

Note 3: 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

(o) Special flight permits may be issued per 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.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17431 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–73–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. This proposal would require the replacement of certain repairs in certain fuselage lap joints with improved repairs. This proposal also would require a high frequency eddy current inspection to find cracking of the repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. This action is necessary to find and fix premature cracking of certain lap joint repairs, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–73–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–73–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to certain Boeing Model 737 series airplanes, which requires repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking detected. That action also requires modification of the fuselage lap joints at certain locations.

Since issuance of that AD, the manufacturer has informed the FAA that during fatigue testing of the skin panels on certain airplanes repaired in accordance with the existing AD, premature cracking in certain lap joint repairs was detected. Multiple cracks were detected underneath the repairs on airplanes that had accumulated between 10,000 and 15,000 test cycles since repair per AD 97–22–07. These repairs were accomplished using the manufacturer's structural repair manual (SRM). Such repairs also may have been installed at times other than that required by AD 97–22–07. This condition, if not detected and corrected, could result in sudden decompression of the airplane.

Other Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Additional repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and replacement of the preventive modification with an improved modification on Model 737 series airplanes, line numbers 292 through 2565 inclusive. And
- Repetitive inspections to find cracking of certain fuselage lap joint areas and modification of those areas, which would constitute terminating action for the repetitive inspections. The actions would be applicable to Model 737 series airplanes, line numbers 1 through 291 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for replacement of certain SRM repairs in the fuselage lap joints with improved repairs. The service bulletin also describes a high frequency eddy current (HFEC) open-hole rotating probe inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the replacement of certain repairs in certain fuselage lap joints with improved repairs. This proposed AD also would require a high frequency eddy current inspection to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found. The actions would be required to be done per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

In light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only the sections in the service bulletin that pertain to inadequate lap joint repairs done per the SRM.

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

Cost Impact

There are approximately 2,359 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 958 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $804,720, or $840 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–73–AD.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes having line numbers 292 through 2565 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix premature cracking of certain fuselage lap joint repairs, which could result in rapid decompression of the airplane, accomplish the following:

Replacement of Structural Repair Manual (SRM) Lap Joint Repairs

(a) For Model 737–200, –200C, and –300 series airplanes: Within 5,000 flight cycles after the effective date of this AD, inspect all lap joints between body station (BS) 259.5 and BS 1016 to identify all repairs accomplished in accordance with 737–200 SRM, Subject 53–30–03, Figure 39 (for 737–200 series airplanes); or Boeing 737–300 SRM, Subject 53–00–01, Figure 227 (for 737–300 series airplanes).

(b) For Model 737–200, –200C, and –300 series airplanes that have a lap joint repair installed at stringers S–4L and S–4R, located between BS 259.5 and BS 1016; and installed at S–10L and S–10R, or at S–14L and S–14R, located between BS 259.5 and BS 540, and between BS 727 and BS 1016; that was previously done per the procedures specified in Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair (for 737–200 series airplanes); or Boeing 737–300 SRM, Subject 53–00–01, Figure 227 repair (for 737–300 series airplanes): Before the accumulation of 15,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, do the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable, per Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. If the area of damage that required the existing repair is outside the lap joint lower row, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(1) If the lap joints are being cut out when replacing the SRM repair: Replace the Figure 39 repair of the lower skin at the lower row of fasteners in the lap joints of the fuselage per Figures 16, 17, and 18 of the Accomplishment Instructions of the service bulletin.

(2) If the lap joints are not being cut out when replacing the SRM repair: Do a high frequency eddy current (HFEC) open-hole rotating probe inspection to find cracking of the SRM repair of the lower skin at the lower row of fasteners in the lap joints of the fuselage, per the Figure 20 inspection procedures of the Accomplishment Instructions of the service bulletin. Before further flight after doing the inspection, replace a Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair with a Boeing 737–200 SRM, Subject 53–30–3, Figure 42 repair (for 737–200 series airplanes); or replace a Boeing 737–300 SRM, Subject 53–00–01, Figure 227 repair with a Boeing 737–300 SRM, Subject 53–00–01, Figure 228 repair (for 737–300 series airplanes); as applicable; per Part II.D. (''Crack Repair'') of the Accomplishment Instructions of the service bulletin.

(c) For Model 737–200, –200C, and –300 series airplanes that have a lap joint repair installed in any area between BS 259.5 and BS 1016, other than those specified in paragraph (b) of this AD, that was previously done per the procedures specified in Boeing 737–200 SRM, Subject 53–30–3, Figure 39 repair (for 737–200 series airplanes); or Boeing 737–300 SRM Subject 53–00–01, Figure 227 repair (for 737–300 series airplanes): Before the accumulation of 20,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, do the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable, per Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(d) For Model 737–400 and –500 series airplanes: Within 5,000 flight cycles after the effective date of this AD, inspect all lap joints between BS 259.5 and BS 1016 to identify all repairs accomplished in accordance with 737–400 SRM, Subject 53–00–01, Figure 229 (for 737–400 series airplanes); or Boeing 737–500 SRM, Subject 53–00–01, Figure 227 (for 737–500 series airplanes).

(e) For Model 737–400 and –500 series airplanes that have a lap joint repair installed at S–4L and S–4R, located between BS 259.5 and BS 1016; and installed at S–10L and S–10R, or S–14L and S–14R, located between BS 259.5 and BS 540, and between BS 727 and BS 1016; that was previously done per the procedures specified in Boeing 737–400 SRM, Subject 53–00–01, Figure 229 repair (for 737–400 series airplanes); or Boeing 737–500 SRM, Figure 227 repair (for 737–500 series airplanes): Before the accumulation of 15,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, cut out and replace the repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(f) For Model 737–400, and –500 series airplanes that have a lap joint repair installed in any area between BS 259.5 and BS 1016, other than those specified in paragraph (d) of this AD, that was previously done per the procedures specified in Boeing 737–400 SRM, Subject 53–00–01, Figure 229 repair (for 737–400 series airplanes); or Boeing 737–500 SRM, Figure 227 repair (for 737–500 series airplanes): Before the accumulation of 20,000 flight cycles since repair installation, or within 5,000 flight cycles after the effective date of this AD, whichever is later, cut out and replace the repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permit

(h) Special flight permits may be issued per 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.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17432 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, that currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. This action would limit the applicability of the existing AD; add certain repetitive inspections; revise certain compliance times; and add certain modifications. This proposal is prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints are necessary. The actions specified by the proposed AD are intended to find and fix fatigue cracking of the fuselage lap joints, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 99–NM–105–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–105–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 10, 1999, the FAA issued AD 99–04–22, amendment 39–11047 (64 FR 7774, February 17, 1999), applicable to all Boeing Model 727, 727–100, 727–200, 727C, 727–100C, and 727–200F series airplanes, to require repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. That AD also provides for optional terminating action for certain repetitive inspections. That action was prompted by a report of fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints. The requirements of that AD are intended to find and fix such fatigue cracking, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–04–22, the FAA has received additional reports of fatigue cracking in the lower skin of the lap joints of the fuselage on Model 727 series airplanes that had accumulated as few as 36,781 total flight cycles, and several airplanes that had accumulated more than 50,000 flight cycles. The airplanes having more than 50,000 flight cycles were previously inspected per that AD. Further investigation revealed additional cracking and corrosion in various areas of the crown skin lap joints at the fastener locations. The majority of the cracks occurred at left and right stringers 4 and 26. The FAA finds that this damage can occur at those stringer locations between 30,000 and 50,000 flight cycles. These cracks are not always detectable using the external inspection procedures required by AD 99–04–22, and can link up with adjacent cracks causing multiple site damage, which can result in a rapid decompression of the fuselage.

Based on these findings, the FAA has determined that the current repetitive external detailed visual inspection procedures required by AD 99–04–22 are not adequate for finding cracks in these locations. Therefore, the FAA finds that additional rulemaking is necessary to require accomplishment of certain lap joint modifications and pre- and post-mod inspections, instead of the repetitive external detailed visual inspections.

Supplemental Type Certificate (STC) Holders

The FAA has determined that approximately half of the airplanes specified in the applicability of this proposed rule have been modified from a passenger configuration to an all-cargo configuration. The FAA has approved several service bulletins (listed below) that could be approved as alternative methods of compliance for the proposed modification requirements, but based on the number of affected airplanes, will instead be included in the proposed rule. The holders of STCs for these modified airplanes have developed these service bulletins to address modification/repair of the longitudinal lap joints in the area of the cargo door doubler only, but all other applicable areas also must be inspected and modified per Boeing Service Bulletin 727–53A0222, Revision 1, dated March 15, 2001.

Public Meeting

A joint FAA and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from STC holders, air carriers, and repair stations, as well as Principal Maintenance Inspectors (PMI) from the FAA's Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain STCs presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. The minutes of the meeting have been placed in the public docket.

Explanation of Relevant Service Information

In addition to Boeing Service Bulletin 727–53A0222, Revision 1, the FAA has approved four service bulletins for STCs that modify affected airplanes from a passenger to an all-cargo configuration. These service bulletins address the areas of the lap joints that are physically externally covered by the addition of large doublers in the area of the cargo door. These doublers affect the loads in the lap joints, and for this reason the STC service bulletins provide inspections and modification instructions for those lap joint areas covered by the doublers.

The FAA has reviewed and approved the following service bulletins:

Service Bulletin	Date
Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A.	March 15, 2001.
Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
PEMCO World Air Services Bulletin 727–53–0007, Revision 1.	June 6, 2001.
Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
Federal Express Corporation Service Bulletin 00–029, Revision A.	May 16, 2001.

The Boeing Service Bulletin describes, but is not limited to, the following procedures:

- Either a Low Frequency Eddy Current (LFEC) or internal detailed visual and Medium Frequency Eddy Current (MFEC) inspection for cracking of the lower row of fasteners in the lower skin of fuselage sections 41, 43, and 46 of the lap joints.
- A High Frequency Eddy Current (HFEC) inspection of the fastener holes to verify crack indications if cracks are found during the LFEC inspection; or accessing the inboard side of the skin to do an MFEC inspection of the lower row of fasteners for verification of cracking in the lower skin.
- After crack indications are verified: An internal detailed visual inspection and an MFEC inspection for damage of the entire skin panel of the lap joint.
- Repair of the damage per the structural repair manual if the damage is within one bay. And
- Modification of the fuselage lap joints, and a post-modification inspection for cracking in the skin. The modification consists of cutting out the lap joint for the entire skin panel and installing an external doubler and tripler at stringers S–4L, S–4R, and S–26L.

The STC service bulletins listed above describe procedures for a one-time pre-modification inspection for cracking of the lower row of fasteners in the lower skin of the lap joint, modification of the surrounding structure of the main cargo door and doublers, and repetitive post-modification HFEC inspections for cracking in the cargo door area. This is to be done concurrent with the modification of the fuselage lap joints specified in the Boeing service bulletin described above.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–04–22 to continue to require certain repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. The proposed AD also would limit the applicability; add certain repetitive inspections; revise certain compliance times; and add certain modifications. The actions would be required to be accomplished per the service bulletins described previously, except as discussed below.

Differences Between the Boeing Service Bulletin and This Proposed AD

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (c) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

While the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require

that the repair of those conditions be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 900 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 99–04–22 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane.

The FAA estimates that the inspections proposed by this NPRM will impose the following costs, given an average labor rate of $60 per work hour:

Service information & inspection method	Work hours	Costs per inspection cycle
Boeing SB 727–53A0222—External LFEC	16	$960
Boeing SB 727–53A0222—Internal Detailed Visual and MFEC (Passenger Airplanes)	120	7,200
Boeing SB 727–53A0222—Internal Detailed Visual and MFEC (Cargo Airplanes)	40	2,400
AEI SB 00–01	12	720
PEMCO SB 727–53–0007	12	720
ATS SB 727–001	12	720
Federal Express SB 00–029	12	720

The FAA estimates that, during the 10-year period after issuance of the proposed AD, worldwide operators will be required to modify 360 Model 727 series airplanes. The modification required by the proposed AD would take approximately 1,200 work hours to accomplish, at an average labor rate of $60 per work hour. The worldwide cost impact of the required modification is estimated to be $37,413,000 over 10 years, or an average of $3,741,000 per year. The highest impact year is the first year after issuance of the AD; an estimated 56 Model 727 series airplanes would require modification in that year. The affected Model 727 airplanes operated by U.S. operators comprise approximately 78 percent of the total worldwide costs. Therefore, the highest cost impact of the modification in any given year is estimated to be $4,527,000 for U.S. operators.

The compliance plan that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the compliance plan on U.S. operators is estimated to be $1,008,000, or $1,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11047 (64 FR 7774, February 17, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–105–AD. Supersedes AD 99–04–22, amendment 39–11047.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints, which could result in sudden fracture and failure of the lap joints, and rapid decompression of the airplane; accomplish the following:

Repetitive Inspections

(a) Do either an external low frequency eddy current (LFEC) inspection to find cracking, or both internal detailed visual and medium frequency eddy current (MFEC) inspections to find cracking or corrosion in the lower skin panels of the lower row of fasteners of the fuselage lap joints at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD on lap joints identified in Tables A through H and J through N; per Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Except as provided by paragraph (b) of this AD, after doing the applicable initial inspection, repeat that inspection at the intervals specified in Tables A through G or J through N of the service bulletin, as applicable.

(1) At the latest of the times specified for the initial inspection in Tables A through H (for Groups 1, 2, 3, and 5 airplanes), or Tables J through N (for Groups 3 and 4 airplanes), as applicable, of Section 1.E. ''Compliance,'' of the service bulletin, except where the compliance time in the service bulletin specifies a compliance time interval based on ''the release of this service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.''

(2) Within 600 flight cycles after the last LFEC inspection or 7,000 flight cycles after the last HFEC inspection, if any, is accomplished in accordance with AD 99–04–22, amendment 39–11047.

Note 2: Groups 1–5 are defined in the effectivity section of the service bulletin.

(b) The repetitive inspection intervals for lap joints identified in Table H of Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, decrease with increasing flight cycles. Perform the repetitive inspections listed in Table H of the service bulletin at the following thresholds and intervals:

(1) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated fewer than 35,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(2) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 35,000 or more, but fewer than 45,000 flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(3) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 45,000 or more, but fewer than 54,999 flight cycles: Perform detailed internal visual and MFEC inspections at intervals not to exceed 2,000 flight cycles.

(4) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane accumulated 55,000 or more total flight cycles: Perform LFEC inspections at intervals not to exceed 300 flight cycle intervals.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to find damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Compliance Plan

(c) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (d) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, ''FAA'' means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 4: Operators are not required to submit revisions to the compliance plan required by paragraph (c) of this AD to the FAA.

Modification/Inspections

(d) For Model 727–200 series airplanes: Accomplish the modification listed in Table H of Paragraph 1., Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, at the threshold in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Within 35,000 flight cycles after doing the modification, do the post-modification inspection for cracking in the skin, per Part III of the Accomplishment Instructions of the service bulletin:

(1) For airplanes that have accumulated less than 35,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 48,000 total flight cycles.

(2) For airplanes that have accumulated between 35,000 and 54,999 total flight cycles on the effective date of the AD: Accomplish the modification prior to 55,000 total flight cycles, or within 2,000 total flight cycles of the effective date of this AD.

(3) For airplanes that have accumulated 55,000 or greater total flight cycles on the effective date of the AD: Accomplish the modification within 2,000 flight cycles after the effective date of this AD.

Repair

(e) If any cracking or corrosion is found during any inspection required by paragraph (a), (b), or (d) of this AD: Before further flight, repair per Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Concurrent Modifications

(f) For Model 727–200 series airplanes modified per supplemental type certificate (STC) SA1368SO or SA1797SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A, dated May 7, 2001, per the service bulletin.

(g) For Model 727–200 series airplanes modified per STC SA1444SO and SA1509SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in PEMCO World Air Services Bulletin 727–53–0007, Revision 1, dated June 6, 2001, per the service bulletin.

(h) For Model 727–200 series airplanes modified per STC SA00015AT: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aircraft Technical Service, Inc., Service Bulletin ATS 727–001, dated May 7, 2001, per the service bulletin.

(i) For Model 727–200 series airplanes modified per STC SA176SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Federal Express Corporation Service Bulletin 00–029, Revision A, dated May 16, 2001, per the service bulletin.

(j) Within 2,200 flight cycles after doing the applicable modification specified in paragraph (f), (g), (h), or (i) of this AD, do the post-modification inspection for cracking in the skin per the applicable service bulletin specified in Table 1, below. Repeat the applicable inspection after that at intervals not to exceed 2,200 flight cycles. Table 1 follows:

TABLE 1

Service Bulletin	Date
(1) Aeronautical Engineers Inc., Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
(2) PEMCO World Air Services Bulletin 727–53–0007, Revision 1.	June 6, 2001.

TABLE 1—Continued

Service Bulletin	Date
(3) Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
(4) Federal Express Corporation Service Bulletin 00–029, Revision A.	May 16, 2001.

Repair

(k) If any cracking is found during any inspection required by paragraph (f), (g), (h), or (i) of this AD: Before further flight, repair per the applicable service bulletin as provided in Table 1 in paragraph (j) of this AD. Where cracks exceed the limits provided in the service bulletin, and the bulletin specifies to contact the provider of the service bulletin for repair instructions, prior to further flight, repair per a method approved by the Manager, Seattle ACO. If any cracking is found is during any inspection required by paragraph (j) of this AD: Before further flight, repair per a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously per AD 99–04–22, amendment 39–11047, are approved as alternative methods of compliance with this AD.

Note 5: 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

(m) Special flight permits may be issued per 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.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17433 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–74–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200 and –200C series airplanes. This proposal would require repetitive inspections to find cracking of certain fuselage lap joint areas, and repair of any cracking found. This proposal also would require eventual modification of those areas, which would constitute terminating action for the repetitive inspections. This action is necessary to find and fix cracking of certain fuselage lap joint areas, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 27, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–74–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1221; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–74–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Structural Airworthiness of Aging Transport Category Airplanes

On April 28, 1988, a Boeing Model 737 series airplane was involved in an accident in which a 15-foot long section

of fuselage structure peeled open during flight. In light of this, the FAA initiated an Aging Fleet Program. The objective of that program is to identify and implement procedures to ensure the continuing structural airworthiness of aging transport category airplanes.

As part of the Aging Fleet Program, the airplane manufacturer conducted cyclic pressure (fatigue) tests to evaluate the performance of the various fuselage skin panel lap joint configurations. The fuselage skin panel joint consists of two adjacent panels that overlap each other longitudinally and are joined together by three rows of fasteners at the overlap (hence, lap joint). Cracks in the upper skin of the lap joint led to the structural failure that occurred in the 1988 accident discussed previously. These lap joints, installed on early Model 737 series airplanes having line numbers 1 through 291, were modified by replacing the countersunk fasteners in the upper fastener row of the lap joint with protruding head fasteners to correct and prevent cracking in the upper skin of the lap joint. To date, no cracking has been detected in the lower fastener row of these (modified) lap joints.

However, at some locations on these same airplanes, the lap joint has a different configuration that includes a doubler, and cracking has been found in the lower row of fasteners in the lower skin of these joints. This type of joint was used extensively on subsequent airplanes (line numbers 292 through 2565 inclusive) to improve the lap joint and to prevent cracks in the upper skin. In 1994, tests were conducted on lap joints that incorporate doublers; test results revealed cracks in the lower skin of this lap joint. The airplane manufacturer determined that these cracks were caused by increased stresses in this area due to the increased bending stresses associated with the installation of the doubler on the upper skin.

In light of these test results, the manufacturer inspected this type of lap joint on five aging airplanes and detected a total of 273 fatigue cracks. The use of eddy current inspection techniques was required as the cracks in the lower skin are not detectable visually due to the positioning of the lower skin between the upper skin and the circumferential tear strap. Many of these cracks were found to have occurred simultaneously at adjacent fastener hole locations in the lower skin of the fuselage lap joint.

This type of cracking of the lap joint is known as multiple site damage (MSD). MSD is characterized by the simultaneous presence of fatigue cracks in the same structural element (such as the lower skin panel of the lap joint). Coalescence of cracks at adjacent fastener holes in the lower skin can lead to sudden fracture and failure of the lap joint, which could result in rapid decompression of the airplane due to the reduction in the residual strength of a lap joint in the presence of MSD. This reduction of the structural integrity of the fuselage may occur at loads significantly below those that would be expected for structure having a single large crack. The accident discussed previously has demonstrated dramatically that small cracks acting together can have a significant effect on the residual strength of the aircraft structure.

Related Rulemaking

On October 21, 1997, the FAA issued AD 97–22–07, amendment 39–10179 (62 FR 55732, October 28, 1997), applicable to Boeing Model 737 series airplanes, line numbers 292 through 2565 inclusive, which requires repetitive inspections to detect cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage that have this doubler, and repair of any cracking detected. That action also requires modification of the fuselage lap joints at stringers S10 and S14, located between body stations (BS) 360 and BS 540, and located between BS 727 and BS 908.

Public Meeting

A joint Federal Aviation Administration (FAA) and Boeing meeting was held on July 25–27, 2000, to inform industry of the activity on Boeing Model 727 and 737 fuselage lap joints. Others in attendance were representatives from air carriers and repair stations, as well as Principal Maintenance Inspectors (PMI) from the FAA Flight Standards Service. The objective of the meeting was to provide an overview of the FAA rulemaking process; discuss the recommendations of Boeing Service Bulletins 727–53A0222 and 737–53A1177, including background information; standardize the 727 and 737 service bulletins, where possible; and discuss the impact that the recommended service bulletin modifications would have on industry.

During the meetings, holders of certain supplemental type certificates presented information pertaining to service bulletin activity for those airplanes that have been modified from a passenger to an all-cargo configuration. The meeting accomplished the objective of exchanging information between the FAA, Boeing, and industry on various aspects of Boeing Models 727 and 737 fuselage lap joints, including compliance planning. As a result of the meeting, attendees recognized the importance of modifying certain lap joints before reaching the point of widespread fatigue damage. Suggestions to improve the service bulletins and clarify AD compliance issues were made by operators and PMIs, and have been incorporated into the service bulletins and the proposed ADs discussed below. In addition, minutes of the public meeting are retained in the docket.

Other Relevant Rulemaking

At this time, the FAA is considering two other separate rulemaking actions to address the remaining potential unsafe conditions relating to the cracking of the lap joints of the fuselage. Those two other actions would address:

- Additional repetitive inspections to find cracking of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and replacement of the preventive modification with an improved modification on Model 737 series airplanes, line numbers 292 through 2565 inclusive. And
- Replacement of certain repairs with improved repairs in certain fuselage lap joints done per the procedures described in the structural repair manual (SRM); and a high frequency eddy current inspection to find cracking of the SRM repairs of the lower skin at the lower row of fasteners in the lap joints of the fuselage, and repair of any cracking found on Model 737 series airplanes, line numbers 292 through 2565 inclusive.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, which describes, among other things, procedures for repetitive low frequency eddy current inspections to find cracking of the left and right stringer S–10 and S–14 lap joint areas, between BS 360 and BS 540, and BS 727 and BS 908, and repair, if necessary. The service bulletin also describes procedures for the installation of a lap joint modification, which, when accomplished, would eliminate the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

require repetitive inspections to find cracking of certain fuselage lap joint areas, and repair of any cracking found. The proposed AD also would require eventual modification of those areas, which would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished per the service bulletin described previously, except as discussed below.

Differences Between Service Bulletin and Proposed Rule

The FAA recognizes that the lap joint modification specified in this proposed AD would require jacking, shoring, removing interior components, and modifying certain lap joints, which would require taking the airplane out of service for as much as 22 days. This lengthy shop visit, as well as the relatively short compliance time required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (d) of this proposed AD would require that operators submit to the FAA a compliance plan within 3 months after the effective date of this AD. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

Operators should note that, in light of the complexity of the service bulletin, three separate rulemaking actions are being issued to address the potential unsafe conditions relating to the cracking of the lap joints of the fuselage. This proposed rule will address only Model 737–200 and –200C series airplanes having line numbers 1 through 291 inclusive.

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

Cost Impact

There are approximately 159 Model 737–200 and –200C series airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry (over 10 years) would be affected by this proposed AD.

It would take approximately 16 work hours per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $52,800, or $960 per airplane, per inspection cycle.

It would take approximately 75 work hours per airplane to accomplish the proposed modifications, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $330,000, or $6,000 per airplane.

The compliance plan that is proposed in this AD action would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the compliance plan on U.S. operators is estimated to be $79,200, or $1,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–74–AD.

Applicability: Model 737–200 and –200C airplanes having line numbers 1 through 291 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 (f) 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 find and fix cracking of certain fuselage lap joint areas, which could result in rapid decompression of the airplane, accomplish the following:

Repetitive Low Frequency Eddy Current (LFEC) Inspections

(a) Do an LFEC inspection to find cracking of the left and right stringers S–10 and S–14 lap joints of the fuselage, located between body station (BS) 727 and BS 747, per Figures 7 and 8 of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the inspection after that at intervals not to exceed 1,200 flight cycles until accomplishment of the lap joint modification (repair) required by paragraph (e) of this AD.

(1) For airplanes that have accumulated 70,000 or more total flight cycles as of the

effective date of this AD: At the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Before the accumulation of 71,200 total flight cycles.

(ii) Within 300 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated 45,000 or more total flight cycles, but less than 70,000 total flight cycles as of the effective date of this AD: At the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before the accumulation of 50,000 total flight cycles.

(ii) Within 1,200 flight cycles after the effective date of this AD.

Crack Repair

(b) Except as provided by paragraph (c) of this AD: If any cracking is found during any inspection required by this AD, before further flight, repair per Part II (''Crack Repair'') of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001.

(c) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001, specifies to contact Boeing for repair instructions: Repair before further flight, per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Compliance Plan

(d) Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (e) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For the purposes of this paragraph, ''FAA'' means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Operators are not required to submit revisions to the compliance plan required by paragraph (d) of this AD to the FAA.

Lap Joint Modification (Repair)

(e) Before the accumulation of 50,000 total flight cycles or within 5,000 flight cycles after the effective date of this AD, whichever comes later: Install the lap joint repair of the left and right stringer S–10 and S–14 lap joints of the fuselage, between BS 727 and BS 747, per Part III (''Lap Joint Repair''), of the Accomplishment Instructions of Boeing Service Bulletin 737–53A1177, Revision 6, dated May 31, 2001. Installation of this repair ends the repetitive inspections of the repaired areas required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permit

(g) 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.

Issued in Renton, Washington, on July 6, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–17434 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 808

RIN 0701–AA64

Installation Entry Policy, Civil Disturbance Intervention, and Disaster Assistance

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising our rules on Enforcement of Order at Air Force Installations, Control of Civilian Disturbances, Support of Disaster Relief Operations, and Special Consideration for Overseas Areas of the Code of Federal Regulations (CFRs) to reflect current policies. Part 808 (previously Part 809a), is the Air Force Instruction (AFI) 31–209 dealing with installation entry policy, barments, enforcing order within or near Air Force installations, civil disturbance, and disaster assistance. It adds expulsion and installation entry point check procedures.

DATES: Submit comments on or before September 10, 2001.

ADDRESSES: SMSgt Walter Filipiak, HQ AFSFC/SFOP, 1720 Patrick Street, Lackland AFB, TX 78236–5226, 210–671–0898.

FOR FURTHER INFORMATION CONTACT: SMSgt Walter Filipiak, 210–671–0898.

SUPPLEMENTARY INFORMATION: This proposed rule implements guidance from section 21 of the Internal Security Act of 1950 (50 U.S.C. 797 and DoD Directive 5200.8, Security of DoD Installations and Resources).

List of Subjects in 32 CFR Part 808

Civil defense, Civil disorders, Disaster assistance, Federal buildings and facilities, Foreign relations, Law enforcement and Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is proposing to amend 32 CFR, Chapter VII by redesignating Part 809a as 808 and revising it to read as follows:

PART 808—INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Sec.
808.0 Purpose.

Subpart A—Installation Entry Policy

808.1 Random installation entry point checks.
808.2 Military responsibility and authority.
808.3 Unauthorized entry.
808.4 Use of Government facilities.
808.5 Barment procedures.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

808.6 Authority.
808.7 Definitions.
808.8 Installation policies and laws.
808.9 Conditions for use of Air Force resources.
808.10 Military Commanders' responsibilities.
808.11 Procedures outside the United States.

§ 808.0 Purpose.

This part prescribes the commanders' authority for enforcing order within or near Air Force installations under their jurisdiction and controlling entry to those installations. It provides guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations. This part applies to installations in the United States, its territories and possessions, and will be used to the maximum extent possible in the overseas commands. Instructions issued by the appropriate overseas commander, status of forces agreements, and other international agreements provide more

definitive guidance for the overseas commands. Nothing in this part should be construed as authorizing or requiring security forces units to collect and maintain information concerning persons or organizations having no affiliation with the Air Force other than a list of persons barred from the installation.

Subpart A—Installation Entry Policy

§ 808.1 Random installation entry point checks.

The installation commander determines when, where, and how to implement random checks of vehicles or pedestrians. The commander conducts random checks to protect the security of the command or to protect government property.

§ 808.2 Military responsibility and authority.

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdiction and for maintaining order on installations, to ensure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, the installation commander must not act in an arbitrary or capricious manner. Their action must be reasonable in relation to their responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, they should prescribe by regulation the rules and conditions governing access to their installation.

§ 808.3 Unauthorized entry.

Under Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797), any directive issued by the commander of a military installation or facility, which includes the parameters for authorized entry to or exit from a military installation, is legally enforceable against all persons whether or not those persons are subject to the Uniformed Code of Military Justice (UCMJ). Military personnel who reenter an installation after having been properly ordered not to do so may be apprehended. Civilian violators may be detained and either escorted off the installation or turned over to proper civilian authorities. Civilian violators may be prosecuted under 18 U.S.C. 1382.

§ 808.4 Use of Government facilities.

Commanders are prohibited from authorizing demonstrations for partisan political purposes. Demonstrations on any Air Force installation for other than political purposes may only occur with the prior approval of the installation commander. Demonstrations that could result in interference with, or prevention of, the orderly accomplishment of the mission of an installation or that present a clear danger to loyalty, discipline or morale of members of the Armed Forces will not be approved.

§ 808.5 Barment procedures.

Under the authority of 50 U.S.C. 797, installation commanders may deny access to the installation through the use of a barment order. Barment orders should be in writing but may also be oral. Security forces maintain a list of personnel barred from the installation.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

§ 808.6 Authority.

The authority to intervene during civil disturbances and to provide disaster assistance is bound by directives issued by competent authorities. States must request federal military intervention or aid directly from the President of the United States by the state's legislature or executive. Installation commanders must immediately report these requests in accordance with AFI 10–802, Military Support to Civil Authorities.

§ 808.7 Definitions.

(a) *Emergencies.* These are conditions which affect public welfare and occur as a result of enemy attack, insurrection, civil disturbances, earthquake, fire, flood, or other public disasters which endanger life and property or disrupt the usual process of government. The term ''emergency'' includes any or all of the conditions explained in this section.

(b) *Civil defense emergency.* This is a disaster situation resulting from devastation created by an enemy attack and requiring emergency operations during and following attack. It may also be proclaimed by appropriate authority in anticipation of an attack.

(c) *Civil disturbances.* These are group acts of violence or disorder prejudicial to public law and order including those which follow a major disaster. They include riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders.

(d) *Major disaster.* Any flood, fire, hurricane, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of the State and local governments in alleviating the damage, hardship, or suffering caused thereby.

§ 808.8 Installation policies and laws.

This subpart contains policies on the use of Air Force military personnel in civil disturbances and disasters. The more important laws concerning military aid to civil authorities are also summarized.

(a) The Air Force gives military assistance to civil authorities in civil defense or civil disturbances and disasters only when such assistance is requested or directed. Commanders will not undertake such assistance without authority, unless the overruling demands of humanity compel immediate action to protect life and property and to restore order.

(b) The military service having available resources nearest the affected area is responsible for providing initial assistance to civil authorities in emergencies. Subsequent operations are to be according to the mutual agreement between the senior service commanders concerned.

(c) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State is the primary responsibility of State and local authorities. It is well-established U.S. Government policy that intervention with military forces takes place only after State and local authorities have used their own forces and are unable to control the situation, or when they do not take appropriate action.

§ 808.9 Conditions for use of Air Force resources.

This part is not intended to extend Air Force responsibilities in emergencies to generate additional resources (manpower, materiel, facilities, etc.) requirements, or encourage participation in such operations at the expense of the Air Force primary mission. It is a guide for the employment of Air Force resources when:

(a) A disaster or disturbance occurs in areas in which the U.S. Air Force is the executive agent of the United States.

(b) A disaster or disturbance occurs in areas that are remote from an Army installation but near an Air Force installation, thereby necessitating Air Force assumption of responsibility pending arrival of Army personnel.

(c) The overriding demand of conditions resulting from a natural

disaster compels immediate action to protect life and property and to restore order.

§ 808.10 Military Commanders' responsibilities.

(a) Civilians in the affected area will be informed of the rules of conduct and other restrictive measures to be enforced by the military. These will be announced by local proclamation or order, and will be given the widest publicity by all available media.

(b) Persons not normally subject to military law, who are taken into custody by military forces incident to civil disturbances, will be turned over to the civil authorities as soon as possible.

(c) Military forces will ordinarily exercise police powers previously inoperative in an affected area; restore and maintain order; maintain essential transportation and communication; and provide necessary relief measures.

(d) U.S. Air Force civilian employees may be used, in any assignments in which they are capable and willing to serve. In planning for on-base contingencies of fires, floods, hurricanes, and other natural disasters, arrangements should be made for the identification and voluntary use of individual employees to the extent that the needs for their services are anticipated.

§ 808.11 Procedures outside the United States.

It is Air Force policy to make every reasonable effort to avoid any confrontation between United States military forces and host nation demonstrators or other dissidents posing a threat to Air Force resources. Intervention by United States military personnel outside the United States is governed by international law, bilateral and other international agreements to which the United States is a party, and host-nation laws. Local plans to counter such situations must include provisions to request and obtain host nation civil or military support as quickly as possible.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–17474 Filed 7–11–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Terrebonne Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating schedules for the Howard Avenue bridge across Terrebonne Bayou, mile 35.0, at Houma, Terrebonne Parish, LA. The proposed rule would place this bridge on the same operating schedule as the Daigleville Bridge, mile 35.5, to facilitate the flow of vehicular traffic during rush hours while still meeting the reasonable needs of navigation. The new schedule will provide a safe, continuous vessel passage through the draws. This action is expected to relieve the bridge owner from the requirement to separately man each bridge by using roving drawtenders to operate the bridges when necessary.

DATES: Comments and related material must reach the Coast Guard on or before September 10, 2001.

ADDRESSES: You may mail comments to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch 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 or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above, or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–01–003), and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you would like confirmation of receipt of your comments, 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 comments received.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The Coast Guard published a notice of proposed rulemaking on March 19, 2001 (66 FR 15373). The proposed rule would have permitted the draws of the S3087 bridge, the Howard Avenue bridge, and the Daigleville bridge to open on signal if at least four hours notice is given, except that, the draw need not open for the passage of vessels Monday through Friday, except Federal holidays, from 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m.

Comments received prompted the Coast Guard to reevaluate the proposal. Two letters were received in response to the public notice. The Louisiana Department of Agriculture offered no comments. Mr. Richard Block of the Gulf Coast Mariners Association stated that the changes requested were unacceptable as proposed. These letters were forwarded to the Louisiana Department of Transportation and Development (LDOTD) for their reevaluation.

LDOTD responded to the Coast Guard with a new proposal. They determined that the special operating regulations for the S3087 bridge and the Daigleville bridge would remain unchanged and they would only request a change to the operation of the Howard Avenue Bridge. They requested that the Howard Avenue bridge be operated on a similar schedule to the Daigleville bridge which is 0.5 miles upstream of the Howard Avenue bridge. As the Howard Avenue bridge is

located between the Daigleville bridge and the S3087 bridge, the requirement for opening the bridge on signal is not needed as the bridge is located between two bridges with special operating regulations.

Discussion of Proposed Rule

Currently, all three drawbridges, the S3087 Bridge (33 CFR 117.505(c)), the Howard Avenue Bridge, and the Daigleville Bridge (33 CFR 117.505(d)) across Terrebonne Bayou are required to open on signal during the day. However, both the S3087 Bridge and Daigleville Bridge have drawbridge operation regulations that require a four-hour advance notice be given. The S3087 Bridge will open on signal if at least four hours notice is given from 5 p.m. to 9 a.m. The Daigleville Bridge will open on signal if at least four hours notice is given from 10 p.m. to 6 a.m. The Daigleville Bridge is also allowed to remain closed-to-navigation Monday through Friday, except holidays, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The Coast Guard proposes to change the regulation in 33 CFR 117.505 to require the draw of the Howard Avenue bridge to open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given.

The Howard Avenue bridge is located between the Daigleville bridge and the S3087 bridge. These bridges have existing special operating regulations that are more restrictive than the open on signal requirement imposed upon the Howard Avenue bridge. LDOTD now wishes to have the operating schedule of the Howard Avenue bridge conform to the requirement of the Daigleville bridge. The Coast Guard has determined that the request by the bridge owner, to have the Howard Avenue bridge operate on the same schedule as the Daigleville bridge is reasonable and meets the needs of navigation.

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).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule allows commercial fishing vessels ample opportunity to transit this waterway before and after the peak vehicular traffic period which occurs between 7 a.m. and 8:30 a.m. and 4:30 p.m. and 6 p.m. according to the vehicle traffic surveys.

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. The proposed rule has considered the needs of the local commercial fishing vessels and it has been determined that, under 5 U.S.C. 605(b), it would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call 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 proposed rule would 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 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 proposed rule is not economically significant and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant

energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.505, paragraph (d) is revised to read as follows:

§ 117.505 Terrebonne Bayou.

* * * * *

(d) The draws of the Howard Avenue bridge, mile 35.0, and the Daigleville bridge, mile 35.5, at Houma, shall open on signal; except that, the draws need not open for the passage of vessels Monday through Friday, except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m., the draws shall open on signal if at least four hours notice is given.

* * * * *

Dated: June 28, 2001.

Roy J. Casto,

RADM, USCG, Commander, 8th CG District.

[FR Doc. 01–17393 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–095]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey. This proposed temporary change to the drawbridge operation regulations would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, from November 1, 2001 through February 28, 2002. A twelve-hour advance notice would be required for all bridge openings. This action is necessary to facilitate structural repairs at the bridge.

DATES: Comments must reach the Coast Guard on or before September 10, 2001.

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

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–0), 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 if they 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 First Coast Guard District, Bridge Branch, at the address 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

The Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water. The existing regulations are listed at 33 CFR 117.755.

The bridge owner, Monmouth County, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge. This proposed temporary rule would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, from November 1, 2001 through February 28, 2002. A twelve-hour advance notice would be required for all bridge openings.

Discussion of Proposal

This proposed temporary change to the drawbridge operation regulations would allow the bridge owner to open the bridge at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., only, after a twelve-hour advance notice is given, while structural repairs are underway at the bridge.

The timed openings and the advance notice requirement are necessary to assist in scheduling repairs and to allow the contractor sufficient time to remove equipment and materials from the bridge in order to provide bridge openings.

The number of bridge openings from November through February in past years have been relatively low. The bridge opening log data for November through February for the past two years is as follows:

	1999–2000	2000–2001
November	68	85
December	31	38

	1999–2000	2000–2001
January	14	6
February	7	13

The Coast Guard believes this rulemaking is reasonable based upon the relatively low number of bridge opening requests during past years November through February and the fact that this work is necessary maintenance required to assure continued uninterrupted operation of the bridge.

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 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, Feb. 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. This conclusion is based on the fact that the bridge will still continue to open daily for navigation.

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 section 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 conclusion is based upon the fact that the bridge will still continue to open daily for navigation.

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.

Collection of Information

This proposed rule would call 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 E.O. 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 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this rule.

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 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From November 1, 2001, through February 28, 2002, in § 117.755 temporarily suspend paragraph (b) and add a new paragraph (c) to read as follows:

§ 117.755 Shrewsbury River.

* * * * *

(c) The Monmouth County highway bridge, mile 4.0, at sea Bright shall open on signal at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., after at least a twelve-hour advance notice is given. Advance notice may be given by calling the number posted at the bridge.

Dated: June 25, 2001.

G.N. Naccara,

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

[FR Doc. 01–17387 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–006]

RIN 2115–AE47

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the periods during which advance notice is required for opening these drawbridges: New Youngs Bay, mile 0.7, across Youngs Bay; Old Youngs Bay, mile 2.4, across Youngs Bay and the Lewis and Clark River Bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. In this proposal the drawbridges would open for the passage of vessels with at least one half-hour notice from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times four hours notice would be required. This would reduce the currently designated daily hours at which only a half-hour notice is required for draw openings.

DATES: Comments and related material must reach the Coast Guard on or before September 10, 2001.

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

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Thirteenth Coast Guard District, (206) 220–7282.

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 (CCGD13–01–006), 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 they 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 Commander Thirteenth Coast Guard District (oan) at the address 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 operating regulations currently in effect for these drawbridges at 33 Code of Federal Regulations 117.899 provide that the spans need not open for the passage of vessels from 5 a.m. to 9 p.m. daily unless at least a half hour notice is provided. During these daily hours notice may be given by marine radio, telephone, or other suitable means. At all other times a minimum of four hours notice is required by telephone only. The three drawbridges have operated according to this schedule since 1993 without complaint from vessel operators. The proposed rule would enable the Oregon Department of Transportation, owner of the bridges, to reduce staffing on half-hour standby during the hours when the bridges have been less frequently opened and to apply these savings to maintenance expenses.

Discussion of Proposed Rule

The proposed change would reduce the Monday through Friday periods that require only a half hour notice to open the bridge for the passage of vessels by one hour in the morning and three in the evening. On Saturdays and Sundays the same period would be reduced by three hours in the morning and five in the evening. In effect, this would likewise increase the daily periods when four hours notice is the minimum requirement for notice by the same number of hours. The change is based on the general reduction in the number of requests for opening by vessel operators and the reduction of requests specific to the hours that would be changed.

In the year 2000 the New Youngs Bay Bridge opened a total of 335 times for an average of less than once a day. The Old Youngs Bay Bridge opened only 47 times in the same year, while the Lewis and Clark River Bridge opened 325 times. Records indicate a significant reduction in openings for the three bridges since 1996. There is less demand for draw openings on the weekends and for the hours of the day that would be added to the period in which four hours notice is required. Based on the data from the year 2000, only four openings occurred during the proposed one-hour change in the morning, Monday through Friday. More openings would have been affected in the evening addition of three hours to the four-hour notice category. However, this number is 27, still a small fraction of the total. The records indicate a marked decrease in the demand for openings from 5 p.m. to 7 p.m.

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. This conclusion is based on the fact that the bridges are not frequently requested to open. The majority of vessels are clients of a boatyard upstream of the Lewis and Clark River Bridge. The advance notice requirement does not obstruct passage for any vessels. Currently, vessels have operated under similar notice requirements without complaint.

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, or 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.

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. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the greater advance notice required in part of the morning and evening should not be significant, especially after vessel operators learn of the change and can therefore plan their trips 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.

Collection of Information

This proposed rule would call 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 E.O. 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 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.899 is revised as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half-hour notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times at least a four-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the passage of vessels if at least one half-hour notice is given to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. Saturday and Sunday. At all other times at least a four-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half-hour notice is given by marine radio, telephone, or other suitable means from 6 a.m. to 6 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. The opening signal is one prolonged blast followed by four short blasts.

Dated: May 7, 2001.

P.M. Sanders,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 01–17381 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 153

46 CFR Part 4

[USCG–2000–6927]

RIN 2115–AD98

Reporting Marine Casualties

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On November 2, 2000, the Coast Guard published a notice of proposed rulemaking to amend the marine casualty reporting requirements by adding ''significant harm to the environment'' as a reportable marine casualty. This supplemental notice of proposed rulemaking addresses only the comments received in response to the Federalism section of the preamble and only proposes a revised Federalism section.

DATES: Comments and related material must reach the Docket Management Facility on or before September 10, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, USCG–2000–6927, 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 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: For questions regarding this proposed rule, contact Lieutenant Junior Grade Edward Jackson, Project Manager, Office of Standards Evaluation and Development (G-MSR), Coast Guard, telephone 202–267–6884. For questions on viewing or submitting material to the docket, call 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–2000–6927], 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, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand 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 they reached the Facility, 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.

Regulatory History

At Coast Guard Headquarters in Washington, DC, we held a public meeting on this project on January 20, 1995 (59 FR 65522; December 20, 1994), regarding amendments contained in the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) that require certain U.S. and foreign-flag vessels to report marine casualties.

On November 2, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Reporting Marine Casualties in the **Federal Register** (65 FR 65808).

Background and Purpose

The Coast Guard received 24 letters commenting on the NPRM, nine of which related to the Federalism section. Several comments also requested a public meeting to discuss the Federalism section. This supplemental notice addresses only the comments regarding the Federalism section and the requests for a public meeting. The remaining comments will be considered as we develop the final rule.

November NPRM

Current marine casualty reporting requirements for U.S.-flag vessels worldwide and foreign-flag vessels in U.S. navigable waters are contained in 46 CFR part 4. The proposed amendments would add ''significant harm to the environment'' as a reportable marine casualty under 46 CFR 4.05–1 for these vessels.

This rulemaking will help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment. In addition, it will lessen the effects of marine casualties by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up. It would also require foreign-flag tank vessels in the U.S. Exclusive Economic Zone (EEZ) to report marine casualties that occur within the U.S. EEZ, involving material damage affecting the seaworthiness or efficiency of a vessel, or significant harm to the environment.

In accordance with § 4106 of OPA 90, the Coast Guard proposes to amend the marine casualty reporting requirements to require U.S. vessels anywhere, foreign vessels in the U.S. navigable waters and foreign tank vessels in the U.S. EEZ to report a discharge or a substantial threat of discharge involving oil, hazardous substances, marine pollutants, or Noxious Liquid Substances (NLS) to the Coast Guard.

We propose to adopt the MARPOL 73/78 standard for reporting discharges and probable discharges.

Discussion of Comments

Federalism

The Coast Guard received 10 comments on the Federalism section of the November 2, 2000 NPRM. These comments stated that the Federalism section appears to preempt states from regulating the reporting of discharges of oil or hazardous substances in U.S. waters as a casualty, and therefore, this section should be revised.

We have considered the comments submitted by the eight States, one regional group, and one corporation. We now recognize that the Federalism statement as published in the NPRM could be interpreted to mean that this rulemaking would preempt State regulations requiring reporting of discharges to State officials. The Coast Guard did not intend such an interpretation, and proposes to revise the Federalism statement accordingly.

In the case of *United States* v. *Locke*, 529 U.S. 89 (2000), the Supreme Court held the States may not regulate in categories reserved for regulation to the Coast Guard, including design, construction, alteration, repair, maintenance, operation, equipping, personnel certification and manning of vessels, among others. Included in the categories reserved to the Coast Guard are regulations requiring the reporting of marine casualties. The Supreme Court recognized that marine casualties resulting in significant harm to the marine environment would be included in the preempted category. The Federalism statement in the NPRM was drafted to reflect that aspect of the *Locke* decision. However, the Court also discussed Section 1018 of OPA 90 at length. Section 1018(a) states, in part, that ''nothing in the Act shall affect, or be construed or interpreted as preempting the authority of any State or any political subdivision thereof from imposing any additional liability or requirements with respect to—(A) the discharge of oil or other pollution by oil within such State or (B) any removal activities in connection with such a discharge.'' Section 1018(c) allows for ''additional liability or additional requirements'' relating to ''the discharge or substantial threat of a discharge of oil.'' While the Court held that Section 1018 did not affect the preemptive impact of the categories described above, State requirements regarding

reporting to it of the actual discharge or the substantial threat of a discharge of oil so that it could undertake its proper role in respect of the removal of such a discharge (and its rules in respect of liability and compensation for that discharge) were unaffected by the decision.

The Coast Guard believes that reporting of discharges or of the substantial threat of a discharge of oil is within the ambit of State regulation contemplated by Section 1018 of OPA, because without such reports, State removal, liability and penalty actions could not commence. Therefore, while State regulation requiring reports of marine casualties that ultimately cause discharges of oil are preempted, State regulations requiring reports of the discharge itself, or the substantial threat of such a discharge, are not preempted. The Coast Guard proposes to revise the Federalism Statement for this rulemaking as follows:

Revised Federalism Statement

A rule has implications for Federalism under Executive Order 13132 if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 6101, 7101 and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel certification, manning and the reporting of marine casualties on vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)). This proposed rule concerns the reporting of marine casualties, including the reporting of casualties causing significant harm to the marine environment. Because States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

However, the determination that States are precluded from regulating in the category of marine casualties does not impact the ability of a State to require reports of the discharge, or the substantial threat of a discharge of oil. Pursuant to Section 1018 of OPA 90, States retain their rights to impose additional requirements regarding reports of the discharge or substantial threat of a discharge of oil for the purpose of responding to the discharge or substantial threat of a discharge and instituting liability and compensation proceedings, providing those requirements do not touch on preempted categories described in the Locke decision. Therefore, present and future State discharge reporting requirements that do not touch on the preemptive marine casualty reporting category are unaffected by the Locke decision and this proposed rule, so in that regard, this proposed rule likewise has no implications for Federalism.

Requests for Public Meeting

We also received comments stating that the Coast Guard should hold a public meeting to address the Federalism section in the NPRM. The Coast Guard believes that this SNPRM addresses these comments and clarifies the Federalism section and that a public meeting will not be necessary.

Dated: May 24, 2001.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–17384 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–134–8–7507; FRL–7011–3]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides From Stationary Sources in the Houston/Galveston Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Texas State Implementation Plan (SIP). This rulemaking covers six separate actions. First, we are proposing to approve revisions to the Texas Nitrogen Oxides (NO_X) rules for point sources of NO_X in the Houston/Galveston (H/GA) ozone nonattainment area of Texas as submitted to us by the State on December 22, 2000. These new limits for point sources of NO_X in the H/GA will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the H/GA 1-hour ozone nonattainment area. Second, we are proposing to exclude Carbon monoxide (CO) and ammonia emission limits ancillary to the NO_X standards for post combustion controls found in Title 30 of the Texas Administrative Code (TAC), Chapter 117. Third, we are proposing to approve, by parallel processing, revisions to the Texas NO_X rules for stationary diesel engines or stationary dual-fuel engines in the H/GA 1-hour ozone nonattainment area. Fourth, we are proposing to approve, through parallel processing, revisions made to the Texas SIP concerning compliance schedules for utility electric generation and Industrial, Commercial, and Institutional (ICI) sources in the H/GA area. Fifth, we are proposing to approve, through parallel processing, revisions made to the Texas SIP concerning lean-burn and rich-burn engines. Sixth, we are listing, not approving, the alternate NO_X emissions specifications and reductions that the May 30, 2001, revision to the Texas SIP contains.

The EPA is proposing approval of SIP revisions described as actions number one, two, three, four, and five to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

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

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and Shar.Alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. What actions are we taking in this document?
2. What happened to the Texas SIP revision from December 22, 2000, to May 30, 2001?

3. What is the sixth action that we are taking in this document?
4. What does the proposed December 22, 2000, SIP revision for point sources of NO_X in the H/GA area say?
5. What is the proposed compliance schedule for point sources of NO_X in the H/GA area based upon the December 22, 2000, SIP revision?
6. What are the existing NO_X emissions specifications, for stationary diesel engines or stationary dual-fuel engines, in the approved Texas SIP?
7. What does the proposed May 30, 2001, SIP revision for stationary diesel engines in the H/GA area say?
8. What is the proposed compliance schedule date for stationary diesel engines in the H/GA area based on the proposed May 30, 2001, SIP revision?
9. What does the proposed May 30, 2001, SIP revision for point sources of NO_X in the H/GA area say?
10. What are the proposed NO_X emissions specifications in the ICI source category for attainment demonstration within the H/GA area, based on the proposed May 30, 2001, SIP revision?
11. What are the proposed alternate NO_X emissions specifications in the ICI source category for attainment demonstration within the H/GA area, based on the proposed May 30, 2001, SIP revision?
12. What are the NO_X emissions reductions based on the proposed May 30, 2001, SIP revision?
13. What are the NO_X emissions reductions based on the future adoption of the alternate NO_X emissions specifications in the proposed May 30, 2001, SIP revision?
14. What is the proposed compliance schedule for utility electric generation point sources of NO_X in the H/GA area based on the proposed May 30, 2001, SIP revision?
15. What is the proposed compliance schedule for utility electric generation point sources of NO_X in the H/GA area under the alternate scenario in the proposed May 30, 2001, SIP revision?
16. What is the proposed compliance schedule for affected ICI sources of NO_X in the H/GA area based on the proposed May 30, 2001, SIP revision?
17. What is the proposed compliance schedule for affected ICI sources of NO_X in the H/GA area under the alternate scenario based on the proposed May 30, 2001, SIP revision?
18. What are NO_X?
19. What is a nonattainment area?
20. What are definitions of major sources for NO_X?
21. What is a State Implementation Plan?
22. What is the Federal approval process for a SIP?
23. What areas in Texas will the stationary diesel engines or stationary dual-fuel engines rule affect based on the proposed May 30, 2001, SIP revision?
24. What areas in Texas will the proposed May 30, 2001, SIP revision for point sources of NO_X affect? Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Actions Are We Taking in This Document?

On December 22, 2000, George W. Bush, then Governor of Texas, submitted rule revisions to 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a revision to the SIP for point sources in the H/GA. The State of Texas submitted this revision to us as a part of the NO_X reductions needed for the H/GA area to attain the 1-hour ozone standard. These NO_X reductions will assist H/GA to attain the 1-hour ozone standard.

The December 22, 2000, submittal required an 89 percent reduction in emissions of NO_X from point sources in the H/GA area. In this document we are taking six separate actions:

(1) We are proposing to approve the December 22, 2000, rule revision to the Texas SIP.

(2) We are proposing to approve that the CO and ammonia emission limits found in 30 TAC Chapter 117 in conjunction with NO_X emission limits, not be a part of the federally approved Texas SIP. In our 65 FR 64148 document published on October 26, 2000, and 65 FR 64914 document published on October 31, 2000, we included CO and ammonia emission limits, in addition to the NO_X emission limits, as a part of the federally approved Texas SIP, by mistake. Texas did not originally request their inclusion and subsequently requested not to have these limits included as a part of the federally approved SIP. We are now correcting that error and are proposing that the limits on CO and ammonia emissions, resulting from use of post combustion controls, not be a part of the federally approved SIP for Texas.

(3) We are proposing to approve, through parallel processing, a procedure explained below, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning stationary diesel engines or stationary dual-fuel engines under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

(4) We are proposing to approve, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning NO_X emissions specifications and compliance schedules for utility electric generation and ICI sources in the H/GA area. Section 9, Table VI, section 14, Table XII, and section 16, Table XIV of this document contain more information about action number four.

(5) We are proposing to approve, through parallel processing, revisions made to sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, and submitted to us, concerning both the lean-burn and rich-burn reciprocating internal combustion engines. Section 10, Table VIII of this document contains more information about action number five.

We will explain action number six in section 3 of this document. To better understand action number six in this document we strongly recommend you read section 2, first.

The public comment period for this proposed State rule revision closes on July 2, 2001. If the State makes significant changes between the version we are parallel processing and the final adopted version, other than those changes resulting from issues discussed in this proposed rulemaking, we will issue an additional notice of proposed rulemaking before taking final action. If there are no significant changes and the State submits the final rule revision to us for approval, then we will go ahead with a final rulemaking.

In this document we are not proposing to approve the alternate or less stringent NO_X emissions specifications and less stringent emissions reductions that are part of the proposed May 30, 2001, Texas SIP revision, at this time. Section 9, Table VII, section 11, Table IX, section 13, Table XI, section 15, Table XIII, and section 17, Table XV of this document contain more information about parts of the proposed May 31, 2001, Texas SIP revision that we are not proposing to approve in this rulemaking action.

Table I contains a summary list of the sections of 30 TAC, Chapter 117 that Texas proposed on May 30, 2001, for sources of NO_X in the H/GA.

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION

Section	Description
117.10	Definitions.

TABLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF 30 TAC, CHAPTER 117 AFFECTED BY THE MAY 30, 2001, PROPOSED RULE REVISION—Continued

Section	Description
117.101	Applicability.
117.103	Exemptions.
117.105	Emission Specifications for Reasonably Available Control Technology.
117.106	Emission Specifications for Attainment Demonstrations.
117.107	Alternative System-wide Emission Specifications.
117.108	System Cap.
117.110	System Cap.
117.111	Initial Demonstration of Compliance.
117.113	Continuous Demonstration of Compliance.
117.114	Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration.
117.116	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
117.119	Notification, Recordkeeping, and Reporting Requirements.
117.121	Alternative Case Specific Specifications.
117.138	System Cap.
117.201	Applicability.
117.203	Exemptions.
117.205	Emission Specifications for Reasonably Available Control Technology (RACT).
117.206	Emission Specifications for Attainment Demonstrations.
117.207	Alternative Plant-wide Emission Specifications.
117.208	Operating Requirements.
117.210	System Cap.
117.211	Initial Demonstration of Compliance.
117.213	Continuous Demonstration of Compliance.
117.214	Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration.
117.216	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.
117.219	Notification, Recordkeeping, and Reporting Requirements.
117.221	Alternative Case Specific Specifications.
117.471	Applicability.
117.473	Exemptions.
117.475	Emission Specifications.
117.478	Operating Requirements.
117.479	Monitoring, Recordkeeping, and Reporting Requirements.
117.510	Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas.
117.520	Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Non-attainment areas.
117.534	Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources.
117.570	Use of Emissions Credits for Compliance.

2. What Happened to the Texas SIP Revision Between December 22, 2000, and May 30, 2001?

On January 19, 2001, a coalition of industries known as the BCCA Appeal Group, joined by Enterprise Products Operating, L.P., Equistar Chemicals, L.P., Lyondell Chemical Company, Lyondell-Citgo Refining, L.P., and Reliant Energy, Incorporated (collectively, Plaintiffs) filed a law suit against the TNRCC, TNRCC's Commissioners, and its Executive Director (Defendants) in the District Court of Travis County of Texas. Among other issues, the suit challenged the requirements of the December 22, 2000, submittal concerning revisions to 30 TAC, Chapter 117 for point sources of NO_X in the H/GA area. The Plaintiffs and Defendants arrived at a negotiated settlement on May 18, 2001. As a result of this settlement, the TNRCC proposed a revision to the 30 TAC, Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' for point sources in the H/GA area, on May 30, 2001.

On June 15, 2001, Texas Governor Rick Perry submitted a request letter to us asking to process the May 30, 2001, proposed rule revisions to 30 TAC, Chapter 117, as a revision to the SIP from point sources in the H/GA, through parallel processing. The State of Texas submitted this revision to us as a part of the NO_X reductions needed for the H/GA area to attain the 1-hour ozone standard.

Under the settlement agreement with BCCA, the TNRCC will conduct a scientific study (Study) examining the causes and possible solutions to the H/GA area's 1-hour ozone nonattainment problem. This Study will assess the impact of reducing emissions of the industrial based VOC due to episodic releases. If the Study shows that the area can reach attainment by 2007 with fewer NO_X emission reductions from point sources of NO_X concurrent with other emission reduction strategies and plans, then the alternate (less stringent when compared with Table II) NO_X emission specifications may take effect for attainment demonstration purposes in the H/GA area.

The TNRCC will have to make its determination and decision in the form of a rulemaking on the Study no later than June 1, 2002. The State will then need to submit any resulting rulemaking to EPA for evaluation and review as a SIP revision.

The Study may also show that reducing VOCs emissions from episodic releases or other emission reduction strategies may not result in the area reaching attainment. In that case, the alternate NO_X emission specifications and less stringent NO_X emission reductions will not be appropriate choices to bring the H/GA area into attainment.

We want to make it clear that regardless of the findings of this Study, or its potential follow up study, the 2007 deadline for compliance with the federal 1-hr ozone standard in the H/GA area will remain unchanged. Any new

control strategy will have to achieve attainment with the federal 1-hr ozone standard by 2007.

We want to make it clear that our listing of the alternate NO_X emissions specifications, alternate compliance schedules, and alternate overall point sources NO_X reductions (May 30, 2001, revision) in this document is by no means indicative of EPA's approval of these listings for point sources of NO_X in the H/GA area.

3. What Is the Sixth Action That We Are Taking in This Document?

(6) We are listing, not approving, the requirements of the May 30, 2001, revision to the Texas SIP, including its alternate (less stringent) NO_X emission specifications and reduction plans, in this document. By listing the requirements of the May 30, 2001, revision to the Texas SIP, including its alternate NO_X emission specifications and reduction plans, we are not approving these requirements. We will evaluate the alternate emission specifications and requirements proposed in the May 30, 2001, revision to the Texas SIP under the following conditions: (1) the area can reach attainment by 2007 with fewer NO_X emission reductions from point sources, and (2) the State renews the request to include the alternative specifications and requirements in the SIP, or (3) an evaluation is otherwise appropriate.

To find out more about the proposed May 30, 2001, revision to the Texas SIP, including its alternate NO_X emission specifications and plans, see sections 9 through 17 of this document.

4. What Does the Proposed December 22, 2000, SIP Revision for Point Sources of NO_X in the H/GA Area Say?

This rule revision requires reductions of NO_X emissions from point sources in the H/GA ozone nonattainment area. The following table contains a summary of the NO_X emission specifications for attainment demonstration purposes that the State adopted in the December 22, 2000, SIP revision for point sources in the H/GA.

TABLE II.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Utility boilers	0.010–0.060 lb/MMBtu.
Turbines and Duct Burners	0.015–0.150 lb/MMBtu.
Heaters and Furnaces	0.010–0.036 lb/MMBtu.
Internal Combustion Engines	0.045–0.133 lb/MMBtu or 0.17–0.50 gram/hp-hr.
Industrial Boilers	0.010–0.089 lb/MMBtu.

The proposed rulemaking will control/reduce NO_X emissions in the H/GA area in two phases or Tiers. We will refer to these two emission reduction phases as Tier I and Tier II Reductions. The following Table contains a summary of the 1997 NO_X emissions and the proposed emission reductions for each point source category in the H/GA area.

We are proposing approval of the above-listed NO_X emissions specifications for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

TABLE III.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	184
Turbines and Duct Burners	155.65	141
Process Heaters and Furnaces	110.12	97
Internal Combustion Engines	86.37	75
Industrial Boilers	85.98	79
Other	32.99	19
Overall Point Sources	667.55	595

The combined NO_X emission reductions of Tier I and Tier II in the proposed rulemaking will be 595 tpd or 89 percent, when compared to the 1997 emission levels. We are proposing approval of the overall NO_X point sources reductions in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

5. What Is the Proposed Compliance Schedule for Point Sources of NO_X in the H/GA Area Based Upon the December 22, 2000, SIP Revision?

As stated before, this rule revision offers a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA. The following table contains a summary of the time-table/compliance schedule for the affected point sources of NO_X in the H/GA.

TABLE IV.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	Investor-owned; first 46% of total required NO_X reductions.

TABLE IV.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES—Continued

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2004	Investor-owned; the next 46% required NO_X reductions.
Utility Electric Generation	March 31, 2007	Investor-owned; final required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2004	First 44% of required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2005	Next 45% of required NO_X reductions.
Industrial, Commercial, and Institutional Combustion Sources.	March 31, 2007	Final NO_X reductions.
Boilers, Process Heaters, and Stationary Engines at Minor Sources.	March 31, 2005	In cap and trade program.
Boilers, Process Heaters, and Stationary Engines at Minor Sources.	March 31, 2005	Not in cap and trade program.

We are of the opinion that the above listed compliance dates and time-table combined with the cap and trade provisions of the rule offer operational flexibility to the affected point sources in the H/GA. We are proposing approval of the above-listed compliance dates for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under Part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

6. What Are the Existing NO_X Emissions Specifications, for Stationary Diesel Engines or Stationary Dual-Fuel Engines, in the Approved Texas SIP?

None. Prior to May 30, 2001, the TNRCC had not proposed regulations in the Texas SIP limiting NO_X emissions from stationary diesel engines or stationary dual-fuel engines.

7. What Does the Proposed May 30, 2001, SIP Revision for Stationary Diesel Engines in the H/GA Area Say?

This proposed rule revision requires reductions of NO_X emissions from stationary diesel engines in the H/GA area. The following table contains a summary of the proposed May 30, 2001, SIP revision for stationary diesel engines in the H/GA area.

TABLE V.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR STATIONARY DIESEL ENGINES IN THE H/GA AREA

Source	NO_X Emission specification
Diesel engines in service after October 1, 2001: not modified, reconstructed, or relocated on or after October 1, 2001	11.0 gram/hp-hr.
Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004	7.0 gram/hp-hr.
Rated less than 11 hp: modified, reconstructed, or relocated on or after October 1, 2004	5.0 gram/hp-hr
11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2004.	6.3 gram/hp-hr.
11 hp ≤ rated < 25 hp: installed, modified, reconstructed, or relocated on or after October 1, 2004	5.0 gram/hp-hr.
25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003.	6.3 gram/hp-hr.
25 hp ≤ rated < 50 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003	5.0 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2003.	6.9 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2003	5.0 gram/hp-hr.
50 hp ≤ rated < 100 hp: installed, modified, reconstructed, or relocated on or after October 1, 2007	3.3 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002.	6.9 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2006.	4.5 gram/hp-hr.
100 hp ≤ rated < 175 hp: installed, modified, reconstructed, or relocated on or after October 1, 2006	2.8 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2002.	6.9 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2002, but before October 1, 2005.	4.5 gram/hp-hr.
175 hp ≤ rated < 300 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005.	4.5 gram/hp-hr.
300 hp ≤ rated < 600 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005.	4.5 gram/hp-hr.
600 hp ≤ rated < 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	2.8 gram/hp-hr.
Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2001, but before October 1, 2005	6.9 gram/hp-hr.
Rated ≥ 750 hp: installed, modified, reconstructed, or relocated on or after October 1, 2005	4.5 gram/hp-hr.

We are of the opinion that these emission specifications are in agreement with those found in Code of Federal Regulations (CFR), Title 40, § 89.112, and EPA's Document Number 420–R–98–016 dated August 1998, entitled

''Final Regulatory Impact Analysis: Control of Emissions from Nonroad Diesel Engines.'' We are also of the opinion that these NO_X emission specifications will contribute to the attainment of the 1-hr ozone standard in the H/GA area. The estimated NO_X emission reductions attributed to the stationary diesel engines or stationary dual-fuel engines provisions of this rule revision is 1.00 tpd.

We are proposing approval of these stationary diesel engines or stationary dual-fuel engines rule revisions under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

8. What Is the Proposed Compliance Schedule Date for Stationary Diesel Engines in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

Under the May 30, 2001, Texas SIP revision, the proposed compliance date for stationary diesel engines and stationary dual-fuel engines in the H/GA area is April 1, 2002. *See* sections 117.520 and 117.534 of the proposed rule. We consider the April 1, 2002, compliance date for stationary diesel engines and dual-fuel engines, in the H/GA area, as expeditious as practicable.

We are proposing approval of these stationary diesel engines or stationary dual-fuel engines compliance schedules under Part D of the Act because Texas is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the H/GA 1-hr ozone nonattainment area.

9. What Does the Proposed May 30, 2001, SIP Revision for Point Sources of NO_X in the H/GA Area Say?

This rule revision requires reductions of NO_X emissions from point sources in the H/GA ozone nonattainment area. The following table contains a summary of the NO_X emission specifications for attainment demonstration purposes that the State has proposed to adopt in the SIP revision for point sources in the H/GA.

TABLE VI.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Utility boilers, gas fired	0.020 lb/MMBtu
Utility boilers, coal-fired or oil-fired	0.040 lb/MMBtu
Auxiliary steam boilers	0.010–0.036 lb/MMBtu
Stationary gas turbines + duct burners in turbine exhaust	0.015–0.150 lb/MMBtu

We are of the opinion that NO_X emission specifications listed in Table VI will contribute to attainment of the 1-hr ozone standard in the H/GA area. We are proposing approval of the above-listed NO_X emissions specifications for affected point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

TABLE VII.—AFFECTED SOURCES AND NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA UNDER ALTERNATE SCENARIO

Source	NO_X emission specification for attainment demonstration
Utility boilers, gas fired	0.030 lb/MMBtu
Utility boilers, coal-fired or oil-fired: wall-fired	0.050 lb/MMBtu
Utility boilers, coal-fired or oil-fired: tangential-fired	0.045 lb/MMBtu
Auxiliary steam boilers	0.030 lb/MMBtu
Stationary gas turbines + duct burners in turbine exhaust	0.032 lb/MMBtu

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table VII of this document.

Instead of adopting NO_X emission specifications listed in Tables II or VII of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

10. What Are the Proposed NO_X Emissions Specifications in ICI Source Category for Attainment Demonstration Within the H/GA Area, Based on the Proposed May 30, 2001, SIP Revision?

You can find proposed NO_X emissions specifications for the ICI source category within the H/GA for attainment demonstration purposes in the H/GA in the following table.

TABLE VIII.—AFFECTED INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES AND THEIR NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA

Source	NO_X emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired rich-burn firing landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.17 gram/hp-hr.

TABLE VIII.—AFFECTED INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES AND THEIR NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION IN THE H/GA—Continued

Source	NO_X emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired lean-burn firing on landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Dual fuel engines with initial start of operation on or before December 31, 2000	5.83 gram/hp-hr.
Dual fuel engines with initial start of operation after December 31, 2000	0.50 gram/hp-hr.
Gas-fired boilers	0.010–0.036 lb/MMBtu.
Fluid catalytic cracking units. Includes CO boilers, CO furnaces, and catalyst regenerator vents	13 ppm @ zero percent O2, dry basis.
Boilers and industrial furnaces	0.015–0.030 lb/MMBtu.
Coke-fired boilers	0.057 lb/MMBtu.
Wood fuel-fired boilers	0.046 lb/MMBtu.
Rice hull-fired boilers	0.089 lb/MMBtu.
Oil-fired boilers	2.0 lb/1,000 gallons of oil burned.
Process heaters	0.010–0.036 lb/MMBtu.
Stationary gas turbines	0.015–0.15 lb/MMBtu.
Duct burners in turbine exhaust ducts	0.015 lb/MMBtu.
Pulping liquor recovery furnaces	0.050 lb/MMBtu or 1.08 lb/ADTP.
Lime kilns	0.66 lb/ton of CaO.
Lightweight aggregate kilns	0.76 lb/ton of product.
Metallurgical heat treat furnaces	0.087 lb/MMBtu.
Metallurgical reheat furnaces	0.062 lb/MMBtu.
Incinerators	0.030 lb/MMBtu.

We are proposing approval of the above-listed NO_X emissions specifications for point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

Instead of adopting NO_X emission specifications listed in Table VIII of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

11. What Are the Proposed Alternate NO_X Emissions specifications in the ICI Source Category for Attainment Demonstration Within the H/GA Area, Based on the Proposed May 30, 2001, SIP Revision?

You can find the proposed alternate NO_X emissions specifications in the ICI source category for attainment demonstration within the H/GA area in the following table:

TABLE IX.—AFFECTED ICI SOURCES AND THEIR ALTERNATE NO_X EMISSION SPECIFICATIONS FOR ATTAINMENT DEMONSTRATION WITHIN THE H/GA AREA

Source	NO_X Emission specification for attainment demonstration
Stationary, reciprocating internal combustion engines: gas-fired rich-burn firing landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired lean-burn firing on landfill gas	0.60 gram/hp-hr.
Stationary, reciprocating internal combustion engines: gas-fired rich-burn not firing on landfill gas	0.50 gram/hp-hr.
Dual fuel engines with initial start of operation on or before December 31, 2000	5.83 gram/hp-hr.
Dual fuel engines with initial start of operation after December 31, 2000	0.50 gram/hp-hr.
Gas-fired boilers	0.020–0.036 lb/MMBtu.
Fluid catalytic cracking units. Includes CO boilers, CO furnaces, and catalyst regenerator vents	40 ppmv @ zero percent O2, dry basis.
Boilers and industrial furnaces	0.015–0.030 lb/MMBtu.
Coke-fired boilers	0.057 lb/MMBtu.
Wood fuel-fired boilers	0.046 lb/MMBtu.
Rice hull-fired boilers	0.089 lb/MMBtu.
Oil-fired boilers	2.0 lb/1,000 gallons of oil burned.
Process heaters except pyrolysis reactors	0.025–0.036 lb/MMBtu.
Pyrolysis reactors	0.036 lb/MMBtu.
Stationary gas turbines	0.032–0.26 lb/MMBtu.
Duct burners in turbine exhaust ducts	0.032–0.26 lb/MMBtu.
Pulping liquor recovery furnaces	0.050 lb/MMBtu or 1.08 lb/ADTP.
Lime kilns	0.66 lb/ton of CaO.
Lightweight aggregate kilns	0.76 lb/ton of product.
Metallurgical heat treat furnaces	0.087 lb/MMBtu.
Metallurgical reheat furnaces	0.062 lb/MMBtu.
Incinerators	0.030 lb/MMBtu.

We are not proposing to approve, through parallel processing, the alternate scenario information listed in Table IX of this document.

Instead of adopting NO_X emission specifications listed in Table IX of this document for affected sources with an annual capacity factor of 0.0383 or less, a source or operator can use an emission specification of 0.060 lb NO_X per million Btu. This option will allow for operational flexibility in the rule.

12. What Are the NO_X Emissions Reductions Based on the Proposed May 30, 2001, SIP Revision?

The proposed rulemaking will control/reduce NO_X emissions in the H/GA area in two phases or Tiers. As stated before, we will refer to these two emission reduction phases as Tier I and Tier II Reductions. The following Table contains a summary of the 1997 NO_X emissions and the May 30, 2001, proposed emission reductions for each point source category in the H/GA area.

TABLE X.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	176
Turbines and Duct Burners	155.65	141
Process Heaters and Furnaces	110.12	97
Internal Combustion Engines	86.37	77
Industrial Boilers	85.98	79
Other	32.99	19
Overall Point Sources	667.55	588

The combined NO_X emission reductions of Tier I and Tier II in this version of the proposed rulemaking will be 588 tpd or 88 percent, when compared to the 1997 emission levels. The change in overall point sources NO_X reductions in Table X, as compared with that of Table III, is due to revisions to the requirements of subsections 117.106(c)(1) and 117.206(c)(9)(D).

13. What Are the NO_X Emissions Reductions Based on the Future Adoption of the Alternate NO_X Emission Specifications in the Proposed May 30, 2001, SIP Revision?

If the State adopts the alternate NO_X emission specifications of Tables VII and IX in future, the expected emission reductions for each point source category in the H/GA area would be as follows:

TABLE XI.—AFFECTED POINT SOURCES, 1997 EMISSIONS, AND PROPOSED EMISSION REDUCTIONS FOR THE H/GA UNDER THE ALTERNATE SCENARIO

Sources	1997 NO_X emissions, tons per day (tpd)	Tier I + Tier II reductions, (tpd)
Utility Boilers	196.44	169
Turbines and Duct Burners	155.65	122
Process Heaters and Furnaces	110.12	63–86
Internal Combustion Engines	86.37	76
Industrial Boilers	85.98	76
Other	32.99	16
Overall Point Sources	667.55	522–545

The combined NO_X emission reductions of Tier I and Tier II under the alternate scenario of the proposed rulemaking would be 522–545 tpd or 78–82 percent, when compared to the 1997 emission levels. The change in overall point sources NO_X reductions in Table XI, as compared with that of Table III, is due to revisions to the requirements of subsections 117.106(c)(1) and 117.206(c)(9)(D).

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XI of this document.

14. What Is the Proposed Compliance Schedule for Utility Electric Generation Point Sources of NO_X in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

As stated before, this rule revision introduces a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA. The following table contains a summary of the time-table/compliance schedule for the affected utility electric generation point sources of NO_X in the H/GA.

TABLE XII.—AFFECTED SOURCES OF NO_X IN THE H/GA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	At least 47% of total required NO_X reductions.
Utility Electric Generation	March 31, 2004	At least 95% of total required NO_X reductions.
Utility Electric Generation	March 31, 2007	Demonstrate compliance with system cap limits of 117.108.

We are of the opinion that the above-listed compliance dates and time-table for affected sources offer operational flexibility to the rule. We are proposing approval of the above-listed compliance dates for affected point sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

15. What Is the Proposed Compliance Schedule for Utility Electric Generation Point Sources of NO_X in the H/GA Area Under the Alternate Scenario in the Proposed May 30, 2001, SIP Revision?

If the TNRCC adopts the alternate emissions specifications, the proposed compliance schedule for ICI sources of NO_X in the H/GA under the alternate scenario would be as follows:

TABLE XIII.—AFFECTED SOURCES OF NO_X IN THE H/GA AND ALTERNATE COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
Utility Electric Generation	March 31, 2003	At least 50% of total required NO_X reductions.
Utility Electric Generation	March 31, 2004	Demonstrate compliance with system cap limits of 117.108.

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XIII of this document.

16. What Is the Proposed Compliance Schedule for Affected ICI Sources of NO_X in the H/GA Area Based on the Proposed May 30, 2001, SIP Revision?

As stated in section 10, this rule revision offers a phased-in approach concerning the emission reductions and compliance schedule for point sources of NO_X in the H/GA area. The following table contains a summary of the time-table/compliance schedule for the affected ICI sources of NO_X in the H/GA area.

TABLE XIV.—AFFECTED ICI SOURCES OF NO_X IN THE H/GA AREA AND COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
ICI sources	March 31, 2004	At least 39% of total required NO_X reductions.
ICI sources	March 31, 2005	At least 67% of total required NO_X reductions.
ICI sources	March 31, 2006	At least 78% of total required NO_X reductions.
ICI sources	March 31, 2007	Demonstrate compliance with system cap limits of 117.210.

We are proposing approval of the above-listed compliance dates for affected ICI sources of NO_X in the H/GA as a part of the Texas 1-hour ozone SIP under part D of the Act because Texas is relying on the NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the H/GA nonattainment area.

17. What Is the Proposed Compliance Schedule for ICI Sources of NO_X in the H/GA Area Under the Alternate Scenario Based on the Proposed May 30, 2001, SIP Revision?

If the TNRCC adopts the alternate emissions specifications, the proposed compliance schedule for ICI sources of NO_X in the H/GA area under the alternate scenario would be as follows:

TABLE XV.—AFFECTED SOURCES OF NO_X IN THE H/GA AREA AND ALTERNATE COMPLIANCE SCHEDULES

Sources	Compliance schedule	Additional information
ICI sources	March 31, 2004	At least 47% of total required NO_X reductions.
ICI sources	March 31, 2005	At least 80% of total required NO_X reductions.
ICI sources	March 31, 2006	At least 93% of total required NO_X reductions.
ICI sources	March 31, 2007	Demonstrate compliance with system cap limits of 117.210.

We are not proposing to approve, through parallel processing, the alternate scenario listed in Table XV of this document.

18. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X result from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

19. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

20. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines ''major stationary source'' as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X. The H/GA area is a severe ozone nonattainment area, so the major source size for the H/GA area is 25 tpy or more, when uncontrolled. This rulemaking will regulate NO_X emissions from major stationary sources in the H/GA area.

21. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

22. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

23. What Areas in Texas Will the Stationary Diesel Engines or Stationary Dual-Fuel Engines Rule Affect Based on the May 30, 2001, SIP Revision?

The following table contains a list of counties affected by the proposed rule revision of the stationary diesel engines or dual-fuel engines that we are parallel processing for approval.

TABLE XVI.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_X SIP

Rule log No.	Affected areas
2001–007B–117–AI Stationary diesel engines and dual-fuel engines provisions.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

If you are in one of these Texas counties, you should refer to the Texas NO_X rules to determine if and how today's action will affect you.

24. What Areas in Texas Will the May 30, 2001, SIP Revision for Point Sources of NO_X Affect?

The following table contains a list of counties affected by the proposed rule revision of the point sources of NO_X that we are parallel processing for approval.

TABLE XVII.—RULE LOG NUMBER AND AFFECTED AREAS FOR TEXAS NO_X SIP

Rule log No.	Affected areas
2001–007B–117–AI ICI and electric utility sources.	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The 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.'' This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 3, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17469 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–4–7475; FRL–7011–5]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Low Emission Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve a State Implementation Plan (SIP) revision for the State of Texas establishing a Low Emission Diesel (LED) fuel for the eastern half of the State. A portion of this revision was recently proposed by the State. EPA's proposal to approve is taken under section 110 of the Clean Air Act (the Act). This approval is also being proposed under the ''parallel processing'' provision of 40 CFR part 51. If there are significant changes between the version of the LED rule which is being ''parallel processed'' and the version of the LED rule which Texas finally adopts, the EPA will propose a new rulemaking. If there are no significant changes to the ''parallel-processed'' version, the EPA will proceed with final rulemaking on the version finally adopted by Texas and submitted to the EPA. Beginning April 1, 2005, aromatic hydrocarbon content, cetane number and sulfur content will be regulated for diesel fuel sold in 110 counties in eastern Texas for use in both motor vehicles and nonroad engines. We propose that the Texas LED fuel program requirements are necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Houston-Galveston (HGA) ozone nonattainment area, and are therefore exempt from preemption under Section 211(c)(4)(C) of the Clean Air Act (the Act).

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

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

The Governor of Texas submitted an attainment demonstration SIP for the HGA 8-county nonattainment area on December 20, 2000. The SIP contained measures for reducing Nitrogen Oxides (NO_X), the pollutant identified as controlling the formation of ozone in this area. The LED fuel program was submitted as part of the attainment demonstration. This LED rule was codified in Chapter 114 of the Texas Administrative Code (TAC)(sections 114.6, 114.312–114.317 and 114.319, December 6, 2000).

Numerous changes to State air pollution control laws occurred during Texas' 77th legislative session. One of these changes relates to the LED program. House Bill 2912 limits the State's authority to regulate fuel content. Unless the Governor vetoes the Bill by June 17, 2001, it will become law. The Bill bans the establishment of fuel control measures more stringent than EPA's between September 1, 2000 and January 1, 2004. The Bill specifically authorizes the LED program, but mandates that implementation be delayed until February 1, 2005. Finally, this Bill allows refiners flexibility in complying with the LED requirements. In anticipation of this legislation, the Texas Natural Resource Conservation Commission (TNRCC) proposed amendments to the LED rule on May 10, 2001.

In a letter to EPA dated June 15, 2001, the Governor requested ''parallel processing'' of the LED regulations with the proposed amendments, which reduce the covered area, change the implementation date, and add a new section providing for an alternative means of compliance. See 30 TAC 114.314, 114.318, 114.319 (May 10, 2001). In today's action, we are proposing approval of the LED regulations with the proposed amendments as they apply to the HGA, Beaumont-Port Arthur, and Dallas Fort Worth nonattainment area counties as well as 95 attainment counties in east Texas.

What Does the State's LED Regulation Include?

The State's LED SIP submittal for the HGA non-attainment area requires that diesel fuel produced for delivery and ultimate sale within the affected counties have a maximum sulfur content of 500 ppm, have no more than 10% aromatic hydrocarbons by volume, and have a cetane number of 48 or greater. Alternative diesel fuel formulations that achieve equivalent emission reductions may also be used.

The regulations apply to diesel fuel sold in the HGA nonattainment counties of Harris, Galveston, Brazoria, Fort Bend, Montgomery, Liberty, Chambers, and Waller; Beaumont-Port Arthur nonattainment counties of Jefferson, Orange and Hardin; and Dallas-Fort Worth nonattainment counties of Dallas, Tarrant, Collin, and Denton; as well as 95 attainment counties in East Texas including Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties in the attainment area.

The State regulations require compliance with the cetane, aromatic hydrocarbon, and 500 ppm sulfur components by April 1, 2005. Starting June 1, 2006, the sulfur level shall be reduced to 15 ppm.

What Are the Requirements of the Clean Air Act?

Section 211(c)(4)(A) of the Act generally prohibits the State from prescribing or attempting to enforce controls respecting motor vehicle fuel characteristics or components that EPA has controlled under section 211(c)(1), unless the State control is identical to the Federal control. Under section 211(c)(4)(C), EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the NAAQS. We may approve a state fuel requirement as necessary if no other measures would bring about timely attainment, or if other measures exist and are technically possible to implement but are unreasonable or impracticable.

In this rulemaking, EPA does not need to determine whether the State requirements for LED fuel used in motor vehicles are preempted under section 211(c)(4)(A) before acting to approve the SIP submittal because EPA is finding the fuel requirements necessary under section 211(c)(4)(C) to achieve the ozone standard in the HGA nonattainment area.

What Did the State Submit?

The State submitted the LED rules as part of the HGA attainment demonstration SIP by letter from the Governor dated December 20, 2000. The SIP submittal contains 30 TAC Chapter 114 rules as adopted on December 6, 2000, a request for a waiver from Federal preemption pursuant to section 211(c)(4)(C) of the Act, and Texas laws providing the authority for the State to adopt and implement revisions to the SIP. The State also submitted a request to ''parallel process'' revisions to the LED rules in a letter from the Governor dated June 15, 2001. These revisions were proposed by the State on May 10, 2001.

Texas previously submitted a waiver request and EPA proposed approval of LED rules for nine counties in the DFW Consolidated Metropolitan Statistical area (66 FR 20415, April 23, 2001). For the HGA nonattainment area, Texas submitted data and analyses to support a finding under section 211(c)(4)(C) that the LED fuel requirement for the affected counties is necessary for the HGA nonattainment area to achieve the ozone NAAQS. The State has (1) identified the quantity of reductions of NO_X needed to achieve attainment of the ozone NAAQS; (2) identified all other control measures and the quantity of reductions each would achieve; (3) identified those control alternatives that were deemed unreasonable or impracticable; and (4) shown that even with the implementation of all reasonable and practicable control measures, the State would need additional emissions reductions for the nonattainment area to meet the ozone NAAQS on a timely basis, and that the LED fuel requirement would supply some of such additional reductions.

Texas submitted its demonstration of necessity for the LED fuel requirement in the State's attainment demonstration for the HGA nonattainment area. The State's submission used photochemical modeling to estimate the quantity of NO_X emission reductions necessary to achieve the ozone NAAQS by 2007. Based on this analysis, Texas estimates that NO_X reductions of 977.07 tons per day (tpd) are necessary to achieve the ozone NAAQS by 2007. Without the LED requirements for the affected counties in the HGA, BPA, and DFW nonattainment areas and the named attainment counties (the ''covered area''), implementation of the reasonable and practicable non-fuel control measures would reduce NO_X emissions by only 918.53 tpd.

What are the Benefits From the LED Fuel Program?

The primary benefit of LED fuel in the HGA attainment demonstration is reduction of NO_X emissions. Without the proposed fuel controls, the area subject to the proposed fuel control would receive diesel fuel for nonroad use that is subject to no federal emissions-related standards or diesel fuel for on-highway use that meets the less stringent, current Federal standards.

Texas is controlling three components of diesel fuel for on-highway vehicles: aromatic hydrocarbons, cetane number and sulfur. The State's sulfur standard, however, is the same as the current Federal requirement for diesel fuel used in motor vehicles. Texas estimated that the 10% cap on aromatic hydrocarbons reduces NO_X from diesel combustion. The cetane number is an indication of ignition properties of the fuel. A fuel with better ignition properties will ignite at a lower heat of compression, thereby reducing the amount of NO_X produced during combustion.

For nonroad engines, Texas' sulfur content standards will provide additional emissions reductions. There is no direct NO_X benefit from controlling sulfur in fuel. However, the State is including the sulfur requirement for nonroad engines because lower sulfur levels prevent fouling of after-treatment NO_X emission control devices that may be installed on nonroad diesel equipment. The State does not need a waiver of preemption for fuel components of nonroad diesel fuel because section 211(c)(4)(A) applies only to State controls respecting motor vehicle (i.e., on-highway) fuel characteristics or components. In addition, there are no Federal requirements promulgated under section 211(c)(1) for characteristics or components of nonroad diesel fuel.

EPA recently reviewed and analyzed all available data on the emission reduction effects of low emission diesel fuels. The final outcome of this evaluation may or may not suggest a need to reconsider the emission reduction estimates used by the State for its LED rule. If the final results of EPA's evaluation indicate that Texas has incorrectly estimated the emission reductions attributable to the LED rule, then EPA will work with the State to adjust the emissions benefit as necessary.

What Other Measures Did Texas Consider Before Selecting LED?

The State evaluated a broad range of potential control measures and estimated the quantity of reductions that could be achieved through implementation of these measures. Over two hundred potential control strategies were initially considered by the State and HGA regional stakeholders as part of the planning process. This list is included in Appendix L of the HGA Attainment SIP (December 2000). The measures that were selected for the attainment demonstration are in Table 1.

TABLE 1.—STATE AND LOCAL CONTROL MEASURES [1] IN THE HGA ATTAINMENT DEMONSTRATION

Measure	NO_X reductions in tpd
Major Point Source NO_X reductions (overall NO_X reductions of 89% from 1997 baseline) in 8 counties	595
Vehicle Inspection and Maintenance (ASM, OBD, and remote sensing) in 8 counties	36.2
Heavy-duty diesel operating restrictions [2] (also called the ''Construction shift'') in 5 urbanized counties	6.7

TABLE 1.—STATE AND LOCAL CONTROL MEASURES [1] IN THE HGA ATTAINMENT DEMONSTRATION—Continued

Measure	NO_X reductions in tpd
Clean Diesel Fuel (subject of this action) in 110 counties on-highway + nonroad	6.67
Small, Spark-Ignition Engine Operating Restrictions in 5 urbanized counties	4.6
Voluntary Mobile Emission Reduction in 8 counties	23
Accelerated Purchase of Tier 2/Tier 3 Diesel Equipment (See footnote 2) in 8 counties	12.20
Speed Limit Reduction in 8 counties	12.33
Airport Ground Support Equipment Electrification in 8 counties	5.09
California Spark-Ignition Engines statewide	2.80
Internal Combustion Engine—Oil category (stationary diesel engines in 8 counties)	1.0
Vehicle Idling Restrictions in 8 counties	0.48
Gas-fired water heaters, small boilers, and process heaters statewide	0.5
Transportation Control Measures in 8 counties	1.06

[1] The attainment demonstration includes additional NO_X reductions from Federal measures.

[2] The 77th Texas Legislature passed a law requiring the TNRCC to submit, by October 1, 2001, a revision to the SIP that deletes the requirements of the ''construction shift'' and the early purchase of Tier 2 and Tier 3 equipment. The commission must include with the revision a report on the effectiveness of the Texas emissions reduction plan in delivering emissions reductions to the degree sufficient to replace the requirements of the construction shift and the early purchase of Tier 2 and Tier 3 equipment. For the purposes of this approval, we still include these measures in our analysis because we have not received this SIP revision. Even if these measures were implemented, there would still be a NO_X shortfall.

The State adopted some controls for implementation within only a portion of the nonattainment area. Heavy-duty diesel operating restrictions and Small, Spark-Ignition Engine Operating Restrictions are applicable to the five (5) urbanized counties of the nonattainment area. All 8 counties were not included because the State decided that it was impracticable to implement these rules beyond the five (5) urbanized counties of the HGA nonattainment area. Recent State legislation, if signed, would require the State to submit a SIP revision removing the Construction Shift rule and Accelerated Tier 2/Tier 3 Purchase from State regulations. (See footnote 2)

Expanding LED and several other measures beyond the HGA nonattainment area can be justified, but other controls beyond the 8 county nonattainment area were considered unreasonable or impracticable by the State, and we concur.

Major Point Source NO_X reductions: Major point source NO_X reductions are mandated only for the 8 county area because NO_X controls for those sources in the attainment areas are mandated by other rules. These rules are NO_X reductions of 30% for grandfathered sources, 50% reductions for grandfathered Electric Generating Facilities, and 30% reductions for Cement Kilns. Therefore the extreme cost of adding additional controls does not justify the relatively small benefit that would result.

Vehicle Inspection and Maintenance: This measure is not reasonable or practicable to implement in rural attainment counties of East Texas because changes in state law would be required, and the time required to seek such changes and implement them make the success of such a measure unpredictable. The State has no legislative authority to mandate this program. The Legislature provides the authority for counties to voluntarily opt in to I/M. In addition, the cost for small business, which would conduct the testing, is prohibitive based on the number of tests that would be conducted in rural areas in comparison to an urban area.

Voluntary Mobile Emission Reductions: This EPA policy provides States flexibility in designing SIPs to meet the NAAQS. The policy contemplates that up to 3% of the total needed emission reductions that can be included in this category. Reasonable and practicable VMEP programs totaling 3% have already been set up within nonattainment counties. A further expansion of this program would be inconsistent with this policy.

Speed Limit Reduction: The reduced speed limit measure is based on vehicle emission information from EPA's MOBILE5 model. There is not a significant amount of vehicle miles traveled and ample fleet size in the attainment counties to justify expanding this measure beyond the 8-county area.

Airport Ground Support Equipment Electrification: It is not necessary (or reasonable) to impose airport GSE electrification in the attainment counties because there are no major airports in those counties.

Internal Combustion Engine—Oil category (stationary diesel engines): The restrictions are designed to reduce unnecessary NO_X emissions in the nonattainment area. It is neither reasonable nor practicable to implement this type of restriction in rural, low density counties of the attainment area.

Vehicle Idling Restrictions: The restrictions are designed to reduce unnecessary vehicle exhaust in congested, nonattainment areas. It is neither reasonable nor practicable to implement this type of restriction in rural, low density counties of the attainment area.

Transportation Control Measures: A TCM is a project that attempts to reduce vehicle use, change traffic flow, or reduce congestion conditions. Due to the semi-rural nature of the attainment counties, reducing vehicle use is not a viable option in this lower population density area. Generally traffic flow is satisfactory and congestion is not an issue. Therefore, implementing TCMs is not reasonable or practicable in the attainment counties.

What Measures Were Considered But Not Selected?

Measures that were quantified but not selected for the SIP are listed in Tables 2 and 3. They fall into two categories: (1) direct NO_X reductions, and (2) VOC reductions that can be substituted for NO_X as achieving equivalent ozone reductions. VOC reduction substitutes for NO_X that produced less than one ton of equivalent NO_X reductions of ozone were rejected. (See the TSD for a more detailed discussion of these measures.) In each case the tons per day available for control were below the 1 ton per day NO_X equivalent reduction of ozone and were therefore rejected as unreasonable or impracticable due to the high cost of implementing VOC controls as NO_X controls.

TABLE 2.—VOC MEASURES QUANTIFIED BUT NOT SELECTED FOR THE SIP

Measure	TPD of VOC available for control
Area/Nonroad Sources (consumer & commercial products; architectural coatings; vehicle refueling; graphic arts; oil and gas; vehicle refinishing)	<2
Chemical manufacturing	<6
Petroleum refining	<5
VOC Storage	1.1

In conducting the point source analysis on reasonably available NO_X control measures, the State discovered one category of sources that may warrant additional controls to meet the RACM threshold. This is the Internal Combustion Engine—Oil category (stationary diesel engines). This category is estimated to produce reductions of about 1 tpd of NO_X. On May 10, 2001, the State proposed controls on this category of sources. This measure has been submitted along with a request for ''parallel processing'' and is the subject of a separate rulemaking. Even assuming the reductions from implementation of this measure, the LED program is still necessary for the attainment of the NAAQS.

Of the NO_X control measures initially considered, there were relatively few that were rejected as unreasonable or impracticable due to either economic or technological infeasibility. In addition there was another small cluster of measures about which there was insufficient information to make a determination. Table 3 lists the other rejected measures.

TABLE 3.—NO_X MEASURES DEEMED UNREASONABLE OR IMPRACTICABLE

Measure	TPD of NO_X available for control
Gas tax increase (gear to Consumer Price Index).	Unknown.
Emission-based registration fees.	Unknown.
Drive-through restrictions	Unknown.
Drive restrictions (time of day or alternate days restriction).	Unknown.
Drive restrictions (by geographic area).	Unknown.
Shuttle for hire (clean-fueled)	Unknown.
Restrictions on the use of agricultural equipment by day/week/season.	Unknown.

TABLE 3.—NO_X MEASURES DEEMED UNREASONABLE OR IMPRACTICABLE—Continued

Measure	TPD of NO_X available for control
Other measures (insufficient information).	Unknown.

Of the control measures identified above, for purposes of section 211(c)(4)(C), all measures in Tables 2 and 3 are considered unreasonable or impracticable for the HGA nonattainment area to implement at this time in comparison to the State's LED requirement. (See the TSD for a more detailed discussion.)

Based on the discussion above, we propose to find that reasonable or practicable non-fuel measures which would bring the HGA nonattainment area into attainment in a timely manner do not exist.

How Does Requiring LED Fuel in the Covered Area Benefit the HGA Nonattainment Area?

Requiring LED fuel in the covered area will reduce emissions of NO_X in the HGA nonattainment area by ensuring that the fuel used by intrastate fleets and long-haul truckers that transit the area but purchase fuel in Texas outside the nonattainment area but within the covered area meets the required fuel characteristics for lowering NO_X.

Requiring LED in the covered area which surrounds the HGA nonattainment area will reduce emissions of NO_X in those areas, which, in turn, benefits the HGA nonattainment area by reducing the transport of ozone and NO_X from the surrounding covered area to the nonattainment area.

The LED Fuel Program Will Reduce the Possible Transport of Ozone From the Surrounding Covered Areas to the Nonattainment Area

Transport into the HGA nonattainment area is not considered a major contributor of ozone, but with the State implementing every ozone reduction measure in the HGA nonattainment area that has ever been implemented elsewhere in the nation, the State is counting on every possible benefit. The Coastal Oxidant Assessment for Southeast Texas (COAST) Study documented the on-shore/off-shore phenomenon called flow reversal. This coastal phenomenon has its influence inland at least 50 km, and perhaps as far as 400 km, easily reaching into the attainment areas surrounding the HGA area.

In the COAST Study, researchers collected aerometric (meteorological and air quality) data to improve understanding of the causes of high ozone in Southeast Texas. This data was then used in conjunction with photochemical modeling to determine control strategy effectiveness including the sensitivity of ozone concentrations in the nonattainment areas to emission reductions in the attainment region. This sensitivity modeling indicated there was an influence of emission reductions in the attainment areas on the nonattainment areas.

The LED Fuel Program Will Reduce the Transport of NO_X From the Surrounding Covered Areas to the Nonattainment Area

EPA policy recognizes that ozone precursors emitted in attainment areas that surround nonattainment areas may be transported into those nonattainment areas and contribute to ozone problems therein. With the December 29, 1997, Guidance for Implementing 1-Hour Ozone and Pre-Existing PM10 NAAQS, EPA recognized that both VOCs and NO_X outside the nonattainment areas at 100 km and 200 km respectively could influence the nonattainment area. We allowed taking credit from sources within these areas of influence in the 9 percent Rate of Progress Plans. The fact that NO_X influence has been shown to be meaningful within 200 km of a nonattainment area supports Texas' justification for controlling the components of diesel fuel in many of the attainment areas surrounding the HGA nonattainment area. We believe it is appropriate to conclude that NO_X emission reductions within this area will benefit the nonattainment area.

Is the LED Fuel Program Necessary To Achieve the NAAQS?

Without the LED program, implementation of all reasonable and practicable non-fuel control measures would reduce NO_X emissions by only 918.53 tpd. An additional 52 tpd of NO_X emissions reductions is necessary for the HGA nonattainment area to achieve timely attainment of the ozone NAAQS. The LED fuel program will supply additional reductions needed for the HGA area to demonstrate attainment. Therefore, we propose to find the LED fuel requirements for the HGA, BPA, and DFW nonattainment counties and 95 attainment counties in East Texas necessary to achieve timely attainment of the ozone NAAQS in the HGA nonattainment area. This satisfies the

requirement of necessity in section 211(c)(4)(C).

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

The LED fuel control program meets the requirements outlined in section 110. Texas submitted the fuel portion of the HGA attainment SIP under a Governor's letter December 20, 2000. In a letter dated June 15, 2001, the Governor requested ''parallel processing'' of proposed revisions to the LED rules which were proposed for public comment on May 10, 2001. The submittals contain the appropriate hearing actions, a preamble, and the LED fuel rules.

How Will the Program Be Enforced?

The TNRCC will implement the LED fuel rule. Anyone, including producers and importers, who sells, offers for sale, supplies, or offers for supply to affected counties the LED fuel are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included. This rule will be enforced in the same way as other regulations implemented by the State. State law allows collection of administrative penalties up to $10,000 per day and civil penalties up to $25,000 per day for violations of air quality regulations. See Vernon's Texas Statutes & Codes, Annotated (VTCA) Water Code, sections 7.002, and 7.051. The State may also seek injunctive relief under section 7.032 of the Water Code.

Why Are We ''Parallel Processing'' and How Does It Work?

Because of the urgency associated with the October 15, 2001, approval deadline imposed by a consent decree order affecting, among others, the Houston Attainment SIP (*Natural Resources Defense Council* v. *Browner*, Civ No. 99–2976, November 30, 1999), Texas requested that EPA proceed with an expedited decision process for this revision to the SIP. Therefore, approval of this revision is being proposed under a procedure called ''parallel processing'', whereby EPA proposes rulemaking action concurrently with the State's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Texas and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the rules may result in a re-proposal, altering the approvability of the SIP.

What Is Proposed?

We are proposing to approve rules establishing a LED fuel requirement for all diesel fuel sold in the HGA, DFW, and BPA nonattainment counties plus 95 attainment counties of East Texas beginning in 2005. We are also proposing to find, under section 211(c)(4)(C), that the State has demonstrated the fuel measure is necessary for attainment of the NAAQS and that no other measures exist which would bring about timely attainment, or if such measures exist, they are not reasonable or practicable.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The 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.'' This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 2, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–17471 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7010–2]

RIN A2060–AJ51

Standards of Performance for Large Municipal Waste Combustors for Which Construction Is Commenced After September 20, 1994 or for Which Modification or Reconstruction Is Commenced After June 19, 1996 and Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed On or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment.

SUMMARY: We are proposing to amend the standards of performance for large municipal waste combustors (MWC) by expanding the definition of mass burn rotary waterwall municipal waste combustors to include mass burn tumbling-tile grate waterwall municipal waste combustors. This change ensures that the same emission limit is established for both types of MWC designs since they exhibit similar combustion characteristics. Since the emissions guidelines for large municipal waste combustors reference the definitions included in the standards of performance, this amendment to the standards has the effect of amending both the standards and the guidelines.

In the Rules and Regulations section of this **Federal Register**, we are making this amendment in a direct final rule, without prior proposal, because we view this revision as noncontroversial, and we anticipate no significant adverse comments. We have explained our reasons for this amendment in the preamble to the direct final rule.

If we receive no significant adverse comments, we will take no further action on this proposed rule. If an adverse comment applies to an amendment, paragraph, or section of the rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn.

DATES: *Comments.* Submit comments on or before August 13, 2001.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by August 1, 2001, we will hold a public hearing on August 13, 2001. Persons interested in attending the hearing should call Mrs. Kelly Hayes at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–45, Subcategory IX–D, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–90–45 contains supporting information used in developing the standards and guidelines. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5251; facsimile number (919) 541–5450; electronic mail address porter.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect®'' version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A–90–45. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit propriety information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such propriety information directly to the following address, and not to the public docket, to ensure that propriety information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of information compiled by EPA in development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the docket contains the record in the case of judicial review. The docket number for this rulemaking is A–90–45, which contains supporting information used in developing the standards and guidelines. An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

World Wide Web. In addition to being available in the docket, an electronic copy of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www/epa/gov/ttn/caaa.* The TTN provides information and technology exchange in various areas of

air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated categories and entities that potentially will be affected by this amendment include the following:

Category	NAICS codes	SIC codes	Regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are 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 criteria in §§ 60.50b and 60.32b of the rules. 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.

What Are the Administrative Requirements for This Action?

For a complete discussion of all of the administrative requirements applicable to this action see the parallel direct final rule in the Rules and Regulations section of this **Federal Register**.

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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business in the regulated industry that has a gross annual revenue less than $6 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

For additional information, see the direct final rule published in the Rules and Regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–17331 Filed 7–11–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 134
Thursday, July 12, 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

Animal and Plant Health Inspection Service

[Docket No. 01–052–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 10, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–052–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–052–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information on the regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States, contact Mr. Wayne W. Burnett, Senior Import Specialist, Phytosanitary Issues Management Staff, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6799. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Mexicali Valley, Karnal Bunt.

OMB Number: 0579–0132.

Type of Request: Extension of a currently approved information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act.

To prevent the introduction and spread of various wheat diseases, including Karnal bunt, a fungal disease, the regulations in ''Subpart—Wheat Diseases'' (7 CFR 319.59 through 319.59–2) prohibit the importation of wheat seed, straw, and other products into the United States from certain parts of the world. Section 319.59–2(b)(3) recognizes a wheat-growing area within the Mexicali Valley of Mexico as being free from Karnal bunt and allows wheat seed, straw, and other products from the Mexicali Valley to be imported into the United States under specified conditions.

Because the remainder of Mexico is not designated as free of Karnal bunt, we require that a phytosanitary certificate accompany seed, straw, and other products imported from the Karnal bunt free area of the Mexicali Valley. The certificate is issued by the Mexican national plant protection organization and states that the wheat or wheat-related articles were grown in the designated Karnal bunt free area of the Mexicali Valley and remained in the Mexicali Valley prior to and during their movement to the United States.

We are asking the Office of Management and Budget (OMB) to approve our continued use of these information collections for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Mexican plant health authorities and growers and exporters of wheat products in the Mexicali Valley, Mexico.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17442 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–056–1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of regulations to prevent the introduction of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 10, 2001.

ADDRESSES: Please send your comment and three copies to: Docket No. 01–056–1, Regulatory Analysis and Development, PPD, APHIS,Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–056–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding exotic Newcastle disease in birds and poultry and chlamydiosis in poultry, contact Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Number: 0579–0116.

Type of Request: Extension of a currently approved information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable diseases of animals and poultry from one State to another, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS regulates the interstate movement of certain poultry, birds, and other items from premises and areas quarantined because of exotic Newcastle disease and chlamydiosis. Restricting movement in this manner enables us to prevent infected or exposed poultry or birds or contaminated articles from spreading disease.

Regulating the interstate movement of poultry, birds, and other items (such as eggs, carcasses, vehicles, containers, and coops) requires the use of certain information gathering activities, including the completion of permit applications attesting to the health status of the birds or poultry being moved, the number and types of birds or poultry being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement.

These documents also provide useful ''traceback'' information in the event infected birds or poultry are discovered and an investigation must be launched to determine where the birds or poultry originated.

The information provided by these documents is critical to our ability to prevent the interstate spread of exotic Newcastle disease and chlamydiosis, which are highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

We are asking the Office of Management and Budget (OMB) to approve our continued use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5965 hours per response.

Respondents: U.S. producers/shippers and State animal health protection authorities.

Estimated annual number of respondents: 57.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 57.

Estimated total annual burden on respondents: 34 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of July 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–17443 Filed 7–11–01; 8:45 am]

BILLING CODE 3410–34–U

BROADCASTING BOARD OF GOVERNORS

Sunshine Meeting Act

DATE AND TIME: July 17, 2001; 8:30 a.m.–9:00 a.m.

PLACE: The Hotel Jerome, Conference Room, 330 East Main Street, Aspen, CO 81611.

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: July 9, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01–17524 Filed 7–10–01; 10:16 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part.

SUMMARY: On February 5, 2001, the Department of Commerce published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Sweden, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 56 manufacturers/exporters. The periods of review are May 1, 1999, through April 30, 2000, for ball bearings and May 1, 1999, through December 31, 1999, for cylindrical roller bearings and spherical plain bearings.

Based on our analysis of the comments received, we have made changes, including corrections of certain programming and other clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: July 12, 2001.

FOR FURTHER INFORMATION: Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Edythe Artman (SNFA), George Callen (SNR), Lyn Johnson (Alfateam—Belgium, Alfa-Team—Germany, Bearing Discount—Germany, Motion Bearings—Singapore, Yoo Shin—South Korea, Rodamientos Rovi—Venezuela, Rovi-Valencia—Venezuela, Rovi-Maracay—Venezuela, RIRSA—Mexico, DCD—Northern Ireland, Euro-Latin-United Kingdom (collectively, Resellers)), David Dirstine, or Richard Rimlinger.

Germany

George Callen (Cerobear), Hermes Pinilla (INA), Thomas Schauer (Torrington Nadellager), Lyn Johnson (Resellers), David Dirstine, or Richard Rimlinger.

Italy

Lyn Johnson (Resellers) or David Dirstine.

Japan

Minoo Hatten (NSK), Thomas Schauer (NTN), Lyn Johnson (Koyo), David Dirstine, or Richard Rimlinger.

Sweden

Lyn Johnson (Resellers) or David Dirstine.

United Kingdom

Thomas Schauer (Timken, RHP/NSK), Dimitry Vladimirov (SNFA), David Dirstine, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2000).

Background

On February 5, 2001, the Department published the preliminary results of the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Sweden, and the United Kingdom (66 FR 8931). The reviews cover 56 manufacturers/exporters. The periods of review (POR) are May 1, 1999, through April 30, 2000, for ball bearings and May 1, 1999, through December 31, 1999, for cylindrical roller bearings and spherical plain bearings. We invited interested parties to comment on our preliminary results. At the request of certain parties, we held hearings for Germany-specific issues and reseller issues for France, Germany, Sweden and Italy on March 22, 2001, and for Japan-specific issues on March 26, 2001. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of the Orders

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings (BBs) with integral shafts, BBs (including radial BBs) and parts thereof, and housed or mounted BB units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30,

8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) (CRBs) and parts thereof, and housed or mounted CRB units and parts thereof.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings (SPBs) that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The HTSUS item numbers are provided for convenience and customs purposes. They are not determinative of the products subject to the orders. The written descriptions remain dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

For a listing of scope determinations which pertain to the orders, see the ''Scope Determinations Memorandum'' (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated May 11, 2001. The Scope Memo is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of the orders on antifriction bearings are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, dated June 5, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. This Decision Memo, which is a public document, is on file in the CRU, Main Commerce Building, Room B–099, and is accessible on the Web at ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

Sales Below Cost in the Home Market

The Department disregarded home-market sales that failed the cost-of-production test for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SNR	BBs
Germany	INA	CRBs
Japan	Koyo	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
United Kingdom	NSK–RHP	BBs

Partial Revocation of the Orders

In the preliminary results we stated our intent to revoke the order covering CRBs from France as it pertains to the sales of these bearings by SNFA France (66 FR at 8934). However, the order on CRBs from France was revoked on January 1, 2000, pursuant to a sunset review decision of the International Trade Commission under section 751(c) of the Act (see *Revocation of Antidumping Duty Orders on Certain Bearings From Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom,* 65 FR 46267 (July 11, 2000) (*Sunset Revocation Notice*)). Therefore, there is no need for us to rule on this matter in the context of this particular review.

In addition, also in our preliminary results, we stated our intent not to revoke the order covering BBs from the United Kingdom as it pertained to sales of these bearings by SNFA U.K. However, due to a recalculation of SNFA U.K.'s margin as the result of clerical errors in our preliminary calculations (see Post-Preliminary Disclosure Memo from Laurie Parkhill to Richard Moreland, dated May 4, 2001), the final margin for SNFA U.K. is zero, and we are revoking this order in part with respect to SNFA U.K. The revocation in part applies to subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 1, 2000.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain firms. We have corrected programming and clerical errors in the preliminary results, where applicable. Any alleged programming or clerical errors about which we or the parties do not agree are discussed in the relevant sections of the Decision Memo, which is accessible on the Web at ia.ita.doc.gov and is on file in the CRU, Room B–099.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1999, through April 30, 2000 (for BBs), and for the period May 1, 1999, through December 31, 1999 (for CRBs and SPBs):

Company	Ball	Cylindrical	Spherical plain
France:			
SNFA	(3)	0.00	.....
SNR	1.64	(3)	.....
Alfateam	66.18	(3)	.....
Alfa-Team	66.18	(3)	.....
Bearing Discount	(2)	(3)	.....
Motion Bearings	66.18	(3)	.....
Yoo Shin	66.18	(3)	.....
Rodamientos Rovi	(2)	(3)	.....
Rovi-Valencia	(2)	(3)	.....
Rovi-Maracay	(2)	(2)	(3)
RIRSA	(2)	(3)	.....
DCD	66.18	(3)	.....
Euro-Latin	(2)	(3)	.....
Germany:			
Cerobear	0.03	0.00	(3)
INA	(1)	2.96	(1)
Torrington Nadellager	1.22	61.60	(3)
Alfateam	70.41	61.60	(3)
Alfa-Team	70.41	61.60	(3)
Bearing Discount	(2)	(2)	(3)
Motion Bearings	70.41	61.60	(3)
Yoo Shin	70.41	61.60	(3)
Rodamientos Rovi	(2)	(2)	(3)
Rovi-Valencia	(2)	(2)	(3)
Rovi-Maracay	(2)	(2)	(3)
RIRSA	(2)	(2)	(3)
DCD	70.41	61.60	(3)
Euro-Latin	(2)	(2)	(3)
Italy:			
Alfateam	68.29	.....	.....
Alfa-Team	68.29	.....	.....
Bearing Discount	(2)	.....	.....
Motion Bearings	68.29	.....	.....
Yoo Shin	68.29	.....	.....
Rodamientos Rovi	(2)	.....	.....
Rovi-Valencia	(2)	.....	.....
Rovi-Maracay	(2)	.....	.....
RIRSA	(2)	.....	.....
DCD	68.29	.....	.....
Euro-Latin	(2)	.....	.....
Japan:			
Koyo	10.10	5.28	0.00
NSK Ltd.	4.22	5.74	(3)
NTN	9.16	16.26	3.60
Sapporo	73.55	(3)	(3)
Sweden:			
Alfateam	13.55	.....	.....
Alfa-Team	13.55	.....	.....
Bearing Discount	(2)	.....	.....
Motion Bearings	13.55	.....	.....
Yoo Shin	13.55	.....	.....
Rodamientos Rovi	(2)	.....	.....
Rovi-Valencia	(2)	.....	.....
Rovi-Maracay	(2)	.....	.....
RIRSA	(2)	.....	.....
DCD	13.55	.....	.....
Euro-Latin	(2)	.....	.....
United Kingdom:			
NSK/RHP	15.65	.....	.....
SNFA	0.00	.....	.....
Timken	1.11	.....	.....

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No request for review under section 751(a) of the Act.

Resellers

With respect to Bearing Discount International, Euro-Latin Export Services Limited, Representaciones Industriales Rodriquez, S.A. de C.V., Rodamientos Rovi C.A., Rovi-Maracay, and Rovi-Valencia, we have determined that these respondents had no shipments during the POR. We have

based our determination on letters from these respondents indicating that they had no shipments and on our examination of the Customs Service database for imports of entered merchandise involving these respondents. Based upon the record and our methodology of reviewing Customs Service information, we have determined that the respondents at issue had no shipments during the POR, and we have not established margins for use as future cash-deposit rates.

As explained in the accompanying Decision Memorandum, however, notwithstanding their letters reporting that they had made no shipments, it is impossible to establish with certainty from Customs Service data the accuracy of their statements. Therefore, we will instruct the Customs Service at the time of liquidation to review all documentation for suspended entries of subject merchandise. If the Customs Service finds that any of the six ''no-shipment'' respondents in fact had shipments of subject merchandise during the POR, we will instruct the Customs Service to apply a facts-available rate to such respondents based on the adverse facts-available rate we have determined for the applicable country of origin (France, Germany, Italy, or Sweden) and subject merchandise. See Preliminary Results, 66 FR 8933, for a description of our determination of these rates.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

a. Export Price

With respect to export-price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's/customer's entries under the relevant order during the review period.

b. Constructed Export Price

For constructed-export-price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for export-price sales we have included the applicable export-price sales in the assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (i.e., each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the EP and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export-price and CEP sales by the combined total value for both export-price and CEP sales to obtain the deposit rate.

We will direct the Customs Service to collect the resulting percentage deposit rate against the entered customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. If an order has been revoked in full or in part, cash deposits will not be required on entries made after the effective date of the revocation, identified in the *Revocation* section above.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of antifriction bearings entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act unless the order has been revoked in full (see *Sunset Revocation Notice*) or in part (see *Revocation* section above): (1) the cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and* Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 61 FR 66472 (December 17, 1996)). These rates are the ''All Others'' rates from the relevant LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely

notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 5, 20002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Facts Available
2. CEP Profit
3. Price Adjustments
   A. Inventory Carrying Costs
   B. Commissions
   C. Bank Charges
   D. Other Direct Selling Expenses
   E. Other
4. Resellers
5. Level of Trade
6. Arm's-Length Test
7. Prototypes and Sales Outside the Ordinary Course of Trade
8. Further Manufacturing
9. Cost of Production and Constructed Value
   A. Profit for Constructed Value
   B. Affiliated-Party Inputs
   C. When to Use CV
10. Packing and Movement Expenses
11. Miscellaneous
   A. Clerical Errors
   B. Scope
   C. Other

[FR Doc. 01–17486 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of the preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from respondent Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') and Markovitz Enterprises, Inc. (Flowline Division), Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge (''Petitioners''), the Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. This review covers one manufacturer and exporter of the subject merchandise. The period of review (''POR'') is June 1, 1999 through May 31, 2000. We preliminarily determine that sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ta Chen's merchandise during the period of review, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed in the section titled ''Preliminary Results of Review,'' infra.

EFFECTIVE DATE: July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6412 and (202) 482–0159, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Taiwan* 58 FR 33250 (June 16, 1993). On June 20, 2000, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan covering the period June 1, 1999 through May 31, 2000. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation* 65 FR 38242 (June 20, 2000). On June 20, 2000, respondent, Ta Chen, requested that the Department conduct an administrative review of Ta Chen for the period of June 1, 1999 through May 31, 2001. On June 30, 2000, Petitioners requested that the Department conduct an administrative review of Ta Chen for the period of June 1, 1999 through May 31, 2000. On July 31, 2000, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 1999 through May 31, 2000. *See Notice of Initiation of Antidumping or Countervailing Duty Administrative Reviews and Requests for Revocation in Part* 65 FR 46687 (July 31, 2000).

On October 26, 2000, the Department issued its antidumping questionnaire to Ta Chen. On November 27, 2000, Ta Chen reported that it made sales of subject merchandise to the United States during the period of review (''POR'') in its response to Section A of the Department's questionnaire. On December 26, 2000, Ta Chen submitted its response to Sections B, C, and D of the Department's questionnaire. On January 2, 2001, Ta Chen submitted a page which was missing from its December 26, 2000 Sections B, C, and D of the Department's questionnaire. On January 8, 2001, the Department issued to Ta Chen a supplemental questionnaire to Section A of the Department's questionnaire. On February 5, 2001, the Department issued to Ta Chen a supplemental questionnaire on Sections B, C, and D of the Department's questionnaire. On February 6, 2001, Ta Chen submitted its supplemental response to Section A of the Department's questionnaire. On March 5, 2001, Ta Chen submitted its supplemental responses to Sections B, C, and D of the Department's questionnaire. On March 8, 2001, Ta Chen submitted a corrected narrative to the Department's supplemental Sections B, C, and D questionnaire. On March 15, 2001, the Department issued to Ta Chen the second supplemental questionnaire to Section A of the Department's questionnaire. On April 6, 2001, Ta Chen submitted its response to the second supplemental questionnaire to Section A of the Department's questionnaire. On April 9, 2001, Ta Chen submitted additional information it claimed was inadvertently omitted from its response to the Department's second Section A supplemental questionnaire. On April 12, 2001, the Department issued a third Section A supplemental questionnaire. On April 23, 2001, Ta Chen submitted its response to the third supplemental Section A response of the Department's questionnaire. On May 4, 2001, the Department issued to Ta Chen a fourth supplemental questionnaire to Section

A. On May 11, 2001, Ta Chen submitted its response to the fourth supplemental Section A of the Department's questionnaire.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On January 9, 2001, the Department extended the time limits for these preliminary results by 90 days to June 1, 2001 in accordance with the Act. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan,* 66 FR 1644 (January 9, 2001). On March 15, 2001, the Department further extended the time limits for these preliminary results by 30 days to July 2, 2001 in accordance with the Act. *See Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan,* 66 FR 15078 (March 15, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows'', ''tees'', ''reducers'', ''stub ends'', and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Period of Review

The POR for this administrative review is June 1, 1999 through May 31, 2000.

Verification

As provided in section 782(i) of the Act, from May 28, 2001 to June 1, 2001, the Department verified sales, cost and production information provided by Ta Chen, using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC. For changes to Ta Chen's expenses based on verification findings, *see Facts Available* section below.

Product Comparison

In accordance with section 771(16) of the Act, we considered all pipe fittings produced by Ta Chen, covered by the description in the ''Scope of Review'' section of this notice, supra, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to pipe fittings sold in the United States. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Ta Chen as follows (listed in order of preference): specification, seam, grade, size and schedule.

As in the 1998–1999 administrative review (''98/99 review''), the record shows that Ta Chen both purchased from, and entered into tolling arrangements with, two unaffiliated Taiwanese manufacturers of subject merchandise. *See* Section A questionnaire response at 2. Also as in the 98/99 review, there was no evidence on the record that either manufacturer had knowledge that these fittings would be sold into the United States market. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of the Antidumping Duty Administrative Review, (''98/99 Final'')* 65 FR 81827 (December 27, 2000). A final unchanged fact from the 98/99 review is that the Department was able to segregate purchased from tolled fittings for certain fittings, but not for others. *Id.* These two factors were the key considerations in the following precedents, which contained similar fact patterns: *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order,* 63 FR 50867, 50876 (Sept. 23, 1998); *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 43152, 43154 (Aug. 9, 1999); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 65 FR 7349, 7356–57 (Feb. 14, 2000); and *98/99 Final* and accompanying Decision Memo at Comment 6. (''*Issues and Decision Memo*''). Therefore, although the Department is able to separate out a significant portion of the sales of purchased fittings, we have determined that it is not appropriate to extract such sales from Ta Chen's U.S. sales database because we have no evidence on the record that the outside producers had knowledge that their subject fittings were destined for sale by Ta Chen in the U.S. market. However, section 771(16) of the Act defines ''foreign like product'' to be ''[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.'' Thus, consistent with the Department's past practice, we have restricted the matching of products which Ta Chen has identified with certainty that it purchased from an outside producer and resold in the U.S. market to identical or similar products purchased by Ta Chen from the same outside producer and resold in the home market. *Id;* and *Analysis Memorandum for Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of the 1999–2000 Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan (''Analysis Memo'')* at 2–3. Finally, where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics or to constructed value (''CV''), as appropriate.

Date of Sale

The Department's regulations state that the Department will normally use

the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If Commerce can establish ''a different date [that] better reflects the date on which the exporter or producer establishes the material terms of sale,'' Commerce may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale in both the home market and U.S. market. *See* Ta Chen's Sections B, C, and D responses at 2–4 (December 26, 2000). Moreover, Ta Chen did not indicate any industry practice which would warrant the use of a date other than invoice date in determining date of sale.

Accordingly, we have no information demonstrating that another date is more appropriate, and we preliminarily based date of sale on invoice date recorded in the ordinary course of business by the involved sellers and resellers of the subject merchandise in accordance with 19 CFR 351.401(i).

Fair Value Comparisons

To determine whether sales of subject merchandise by Ta Chen to the United States were made at below NV, we compared, where appropriate, the CEP to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product where there were sales at prices above the cost of production (''COP''), as discussed in the Cost of Production Analysis section, below. For a further discussion of the EP sales reclassification to CEP, see below.

Export Price/Constructed Export Price

Section 772(a) of the Act defines export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.* * *'' Section 772(b) of the Act defines constructed export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.* * *''

In the instant case, all of the sales at issue were ''back-to-back'' sales; that is, Ta Chen sold pipe fittings to Ta Chen's U.S. affiliate, TCI, and then TCI sold the pipe fittings to the unaffiliated U.S. customers at a marked-up price to account for TCI's commission and selling expenses. See Sections B, C, and D supplemental questionnaire response (February 6, 2001) at 5. In addition, the record evidence demonstrates that for sales reported by Ta Chen as EP sales, the sale to the first unaffiliated customer was made between TCI and the unaffiliated customer in the United States. See Sections B, C, and D supplemental questionnaire response database (February 6, 2001). TCI takes title to subject merchandise, invoices the U.S. customer, and receives payment from the U.S. customer. In addition, TCI incurs seller's risk, makes agreements with commission agents, relays orders and price requests from the U.S. customer to Ta Chen, and pays for containerization expenses, U.S. customs broker charges, U.S. antidumping duties and international freight. *See* Section A Supplemental Questionnaire Response (February 6, 2001) at 5–6. Ta Chen also stated that on occasion the U.S. customer will initiate the sale with TCI or TCI will initiate the sale with the customer. *Id.*

Based on these facts, we have determined that these sales originally reported as EP by Ta Chen meet the standard for CEP since the first sale to an unaffiliated customer occurred in the United States and was between TCI and the U.S. purchaser. Therefore, the sales originally reported by Ta Chen as EP sales were reclassified by the Department as CEP sales.

Having determined such sales are CEP, we calculated the price of Ta Chen's United States sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on FOB or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we deducted discounts. Also where appropriate, in accordance with section 772(d)(1), the Department deducted commissions, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. Customs duties. Finally, pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with Department practice, we recalculated credit expenses for CEP sales by basing credit on Ta Chen's U.S. dollar-denominated short-term borrowing rate, rather than on Ta Chen's home market currency-denominated short-term borrowing rate. *See* Import Administration Policy Bulletin, Imputed Credit Expenses and Interest rates (February 23, 1998); *Analysis Memo* at 7–9.

Normal Value

After testing home market viability, as discussed below, we calculated normal value (''NV'') as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. In addition, Ta Chen stated that the home market is viable since sales to the home market are more than 5 percent by quantity of sales in the United States. *See* Sections A questionnaire response (November 27, 2001) at 3. Because Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We, therefore, based NV on home market sales.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production in the most-recently completed segment of this proceeding,[1] we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ta Chen's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (''G&A''), interest expenses, and packing costs. We relied on the COP

[1] *See 98/99 Final*, 65 FR at 81828.

data submitted by Ta Chen in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ta Chen's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ta Chen to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ta Chen's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ta Chen in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production (''COP''), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted early payment discounts, credit expenses, and inland freight. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where there we no usable contemporaneous matches to a U.S. sale observation, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondent, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997).

Ta Chen reported one LOT in the home market based on two channels of distribution: trading companies and end-users. We examined the reported selling functions and found that Ta Chen's selling functions, to its home market customers regardless of channel of distribution, include inventory maintenance to date of shipment, incurring risk of non-payment, extension of credit terms, addresses customer complaints, research and development and technical assistance, after-sale services, and freight and delivery arrangement. *See* Section A supplemental questionnaire response at 6–8. We, therefore, preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

Because Ta Chen reported that all of its U.S. CEP sales are made through TCI, Ta Chen is claiming that there is only one LOT in the U.S. market for its constructed export price sales and we preliminarily agree with Ta Chen that its U.S. sales constitute a single LOT. We examined the reported selling functions and found that Ta Chen's selling functions for sales to TCI include inventory maintenance to date of shipment, incurring risk of non-payment, extension of credit terms, research and development and technical assistance, after-sale services, and freight and delivery arrangement.

When we compared the LOT of the CEP sales to Ta Chen's home market LOT, we noted that Ta Chen reported that it provided moderate-to-low technical assistance at its home market LOT, while providing very similar services at its CEP level. Therefore, the selling functions performed by Ta Chen in both markets leads us to conclude that any differences in selling activities are not significant. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same LOT. Therefore, we have not made a LOT adjustment because all price comparisons are at the

same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate. Additionally, because we found that the LOT in the home market matched the LOT of the CEP transactions, we did not make a CEP offset by adjusting normal value under section 777(a)(7)(B) of the Act.

Reimbursement

We found reimbursement in the most-recently completed segment of this proceeding. Therefore, we have analyzed the evidence on the record of this proceeding regarding reimbursement. *See 98/99 Final*, 65 FR at 81829. Unlike the prior review, information exists on the record which makes clear that the agreement to reimburse antidumping duties, when signed, was limited solely to the 1992–1994 PORs. *See* Section A Questionnaire Response (November 27, 2000) at 346. Because the agreement is clearly limited to those PORs, and therefore did not apply to any antidumping duties incurred during later periods, the rebuttable presumption that there is continuing reimbursement is overcome.[2] Therefore, the Department has preliminary determined that an agreement to reimburse is not in effect for this POR.

Facts Available

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate for one element of Ta Chen's dumping margin calculation. Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In this case, section 776(a)(2)(A) of the Act applies because, at the verification of Ta Chen and TCI on May 28, 2001 through June 1, 2001, we discovered that TCI failed to report expenses incurred to move inventory among its warehouses, which should properly have been reported in its calculation of U.S. indirect selling expenses (''ISE''). *See U.S. Verification in the Administrative Review of the Antidumping Duty Order on Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the Period 6/1/99–5/31/00 (''U.S. Verification Report*'') at 6.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See The Statement of Administrative Action to the URAA* at 870 (''SAA''). In this instance, the use of an adverse inference is appropriate because Ta Chen failed to act to the best of its ability in providing the data it had about these expenses in advance of verification because Ta Chen, without consulting with the Department, determined that the expenses were too small. *See U.S. Verification Report* at 6.

Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, we have preliminarily determined that the use of partial adverse facts available is warranted. As adverse facts available, the Department recalculated Ta Chen's reported U.S. ISE expenses by adding a certain percentage to the reported U.S. ISE percentage. The Department calculated the certain percentage by first taking the sum of the unreported expenses as listed in the U.S. Verification Report at Exhibit TCI–12, and deducting from that total the amount which is clearly attributable to non-subject merchandise. The Department subtracted the non-subject merchandise-related expenses in order to ensure that the numerator and denominator of the certain percentage were both calculated on the same basis to the extent possible, given the data collected at verification. The Department then divided the resulting figure by the total value of TCI's U.S. sales of subject merchandise as reported in its U.S. sales database, rather than TCI's total sales, to arrive at the certain percentage to be added to the reported U.S. ISE percentage as adverse facts available.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1996) and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996. As indicated in these precedents, the benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 1999, through May 31, 2000:

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM TAIWAN

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ta Chen	5.24

The Department will disclose to any party to the proceeding, within five days of publication of this notice, the calculations performed (19 CFR 351.224(b)). Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish the final results of this administrative review,

[2] Note that Ta Chen submitted a letter signed by Robert Shieh, President of Ta Chen on February 1, 2001 which indicated that the agreement has been terminated. *See* Section A Supplemental Questionnaire Response (February 6, 2001) at Attachment 19. However, the letter was written after the last date of the POR, is not related to the issue of the rebuttable presumption of reimbursement and, therefore, is not dispositive.

which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ta Chen, the only reviewed company, will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the ''all other'' rate established in the LTFV investigation, which was 51.01 percent.

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

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–17485 Filed 7–11–01; 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, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) 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, DC 20230. 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 01–00004.'' A summary of the application follows.

Summary of the Application

Applicant: International Trading Group, LLC (''ITG''), 300 E. Lombard Street, Baltimore, Maryland 21202.

Contact: Kathy L. Ducassou, President and Chief Operating Officer.

Telephone: (410) 466–8114.

Application No.: 01–00004.

Date Deemed Submitted: June 29, 2001.

Members (in addition to applicant): None.

ITG seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; marketing research analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions;

organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands). The proposed Export Trade Certificate of Review would extend antitrust protection to ITG to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;
3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;
4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products and Services in Export Markets;
5. Enter into exclusive or non-exclusive agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;
6. Allocate sales, export orders and/or divide Export Markets among Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;
7. Allocate the licensing of Technology Rights in Export Markets among Suppliers, Export Intermediaries, or other persons;
8. Establish the price of Products and Services for sale in Export Markets;
9. Establish the fee for licensing of Technology Rights in Export Markets; and
10. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, ITG will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. ITG will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Dated: July 9, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–17447 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DR–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

July 6, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of request alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex cannot be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen or Lori Mennitt, International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Summary

On May 8, 2001 the Chairman of CITA received a petition on behalf of Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in subheading 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabric be eligible for preferential treatment under the CBTPA. As a result, CITA published a Federal Register Notice (66 FR 13912) requesting public comments on the petition. These comments were due May 30, 2001. Based on its review of the petition, public comments received, and other information obtained, CITA is denying Freudenberg's petition.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On May 8, 2001 the Chairman of CITA received a petition on behalf of Freudenberg Nonwovens Group alleging that microfilament fabric of continuous polyester and nylon filaments with average size of 0.02 to 0.8 decitex, classified in subheadings 5603.11.0090, 5603.12.0090, 5603.13.0090 or 5603.14.9090 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabric be eligible for preferential treatment under the CBTPA.

CITA solicited public comments regarding this request (66 FR 26841, published on May 15, 2001) particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of the petition, public comments received and other information obtained, CITA has determined that microfilament fabrics of continuous polyester and nylon filaments of 0.02 to 0.8 decitex are produced in commercial quantities in the United States and are readily available from U.S. producers. The Freudenberg product has unique features that are not duplicated by domestically produced nonwoven fabrics. However, the product that is the subject of the petition (microfilament fabrics of continous polyester and nylon filaments in sizes 0.02 to 0.8 decitex) encompasses a wide range of nonwoven fabrics, including those produced in the United States.

Based on its review of the petition, public comments received, and other information obtained, CITA is denying Freudenberg's petition. Freudenberg did not establish that microfilament fabrics of continous polyester and nylon filaments in sizes 0.02 to 0.8 decitex cannot be supplied by the domestic industry in commercial quantities in a timely manner.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–17437 Filed 7–11–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Programmatic Environmental Impact Statement on the, Disposition of Scrap Metals and Announcement of Public Scoping Meetings

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement.

SUMMARY: This notice announces the Department of Energy's (DOE's) intention to prepare a Programmatic Environmental Impact Statement (PEIS), under the National Environmental Policy Act, on the policy alternatives for the disposition of DOE scrap metals that may have residual surface radioactivity. The primary metals to be considered in the analysis are carbon steel and stainless steel. Other metals [e.g., copper, aluminum, lead, and precious metals (silver, gold, platinum)], which exist in smaller quantities, will also be addressed in the PEIS. The disposition alternatives to be analyzed include: continuation of the suspension on unrestricted release of scrap metals from DOE radiological areas for recycling; unrestricted release of scrap metals for recycling under existing DOE requirements; unrestricted release of scrap metals for recycling under alternative requirements; and no unrestricted release for recycling of scrap metals with any potential for residual surface radioactivity.

DATES: The public scoping period begins with publication of this Notice and concludes September 10, 2001. DOE invites Federal agencies, Native American tribes, state and local governments, and members of the public to comment on the scope of this PEIS. DOE will consider all comments received by the close of the scoping period and will consider comments received after that date to the extent practicable. DOE will conduct public scoping meetings to assist in defining the appropriate scope of the PEIS, including the alternatives and significant environmental issues to be considered. See **SUPPLEMENTARY INFORMATION** under Public Scoping Process for meeting locations.

ADDRESSES: Comments on the scope of the PEIS may be mailed to the address below or sent by facsimile or electronic mail. Written comments may be mailed to the following address: Kenneth G. Picha, Jr., Office of Technical Program Integration, EM–22, Attn: Metals Disposition PEIS, Office of Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0113.

Otherwise, send comments via facsimile to Metals Disposition PEIS at 301–903–9770 or send electronic mail to *Metals.Disposition.PEIS@em.doe.gov.* See **SUPPLEMENTARY INFORMATION** under Public Scoping Process for meeting locations.

FOR FURTHER INFORMATION CONTACT: To request further information about this PEIS, the public scoping meetings, or to be placed on the PEIS distribution list, use any of the methods listed under **ADDRESSES** above. For background documents in hard copy related to this PEIS contact the DOE Center for Environmental Management Information at 800–736–3282. For general information concerning the DOE National Environmental Policy Act (NEPA) process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Telephone: 202–586–4600, Voice Mail: 800–472–2756, Facsimile: 202–586–7031.

Additional NEPA information is also available on the DOE website: http//tis.eh.doe.gov/nepa/.

SUPPLEMENTARY INFORMATION:

Definitions

For purposes of this Notice, the following terms are defined:

Continued Radiological Control: The disposition of surplus and scrap metals for subsequent reuse or recycle in a government or commercial radiological application. Such reuse or recycle activities would be conducted under established agency-to-agency protocols, Nuclear Regulatory Commission (NRC) licenses, or NRC Agreement State licenses.

DOE Radiological Area: An area, designated under 10 CFR Part 835, for which DOE requires specific measures to be taken, such as access control and monitoring, to protect DOE workers from radiological hazards. A radiological area may or may not contain radioactive materials. An example of a radiological area that does not contain radioactive material is an area that contains only devices that produce radiation, such as X-ray machines, but which are not themselves radioactive and are unable to make other materials radioactive.

Recycle: The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products. (Executive Order 13101)

Residual Radioactivity: Any radioactivity that is in or on soil, air, equipment, or structures as a consequence of past operations or activities at a DOE site. (Residual radioactivity does not include background radioactivity.)

Restricted Release: The release of scrap metals from DOE radiological control for a limited, specifically-stated application, subject to restrictions on use implemented by a designated party or through a specific process. An example would be the release of scrap steel specifically for use in making radioactive waste storage containers.

Reuse: The subsequent use of a surplus item in its original form for the same or similar purpose.

Scrap metal: Surplus metal that has no value except for its basic material content. Scrap metal could include items such as furniture and equipment

that cannot be reused, construction steel, and metals not yet put to use such as ingots that would have to be processed to be used.

Surplus metal: Metal items that DOE does not need.

Unrestricted Release: The release of property, including scrap metal, without any restrictions or controls on its use.

Volumetrically Contaminated: A material that has residual radioactivity distributed throughout its volume, as opposed to residing only on the exterior surface of the material.

Background

DOE generates surplus and scrap material during the normal course of activities. The types of surplus and scrap material include metals, concrete, soils, paper, wood, chemicals, equipment, and facilities. Consistent with common industrial practice, DOE has historically sought to reduce the amount of material that must be disposed of by reusing and recycling as much of this surplus and scrap material as possible. This practice is consistent with the requirements of Executive Orders 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, and 13148, Greening the Government Through Leadership in Environmental Management. Historically, some of this material has been reused or recycled within the DOE system, some has been released for reuse or recycling outside of DOE, and some has been disposed of. The residual value of reused or recycled materials, along with the costs avoided by not having to pay to dispose of such materials, have reduced the cost of environmental cleanup and waste disposal activities at DOE sites.

The recycling of materials that have residual radioactivity could affect workers involved in the recycling of those materials, and also the general public, because products manufactured from recycled materials may have many exposure pathways to the public. To protect recycle workers, the general public, and the environment, DOE has established requirements (DOE Order 5400.5, Radiation Protection of the Public) for surveying materials for radioactivity and for allowable residual radioactivity levels for unrestricted release of such materials. These requirements allow unrestricted release of materials with radioactivity slightly above background radioactivity levels. Release limits under DOE Order 5400.5 are comparable to those in corresponding regulations established by the NRC and NRC Agreement States, and are generally more stringent than international standards set by the International Atomic Energy Agency. These release limits are intended to provide assurance that potential exposures to the public from residual radioactivity will be well below general radiation exposure limits established by DOE and NRC for protection of the public.

Despite these release limits, however, some members of the public and some industry groups have expressed concern regarding the potential impacts from radioactivity in or on the material released. This concern has primarily focused on releases of metals from DOE facilities, and is related to a number of factors, including the wide range of potential uses of recycled metals, such as in household products, and the potential effects on industrial operations and product acceptability. Although DOE has not identified any evidence that the public might be harmed by releases from DOE facilities, DOE has, in response to previously expressed concerns, identified opportunities to improve radiation monitoring, independent verifications, and record keeping and reporting.

The Department also responded to the stakeholders' concerns by taking two actions. First, on January 12, 2000, the Department established a moratorium on the release of volumetrically contaminated metals from any DOE location pending a decision by the NRC on potential policy and technical approaches for release of solid materials. The NRC continues to review this issue and the DOE moratorium remains in effect. Second, on July 13, 2000, the Department: (1) Initiated a process to improve the administration of its release limits, (2) enhanced its criteria for controlling the release of metal for recycling, and (3) temporarily suspended the unrestricted release of scrap metal, for recycling, from radiological areas at DOE facilities. The suspension was to remain in effect until DOE directives and guidance were reviewed and amended as necessary to ensure that no metal with detectable radioactivity above background (using appropriate commercially available monitoring equipment) would undergo unrestricted release for recycling. The suspension does not apply to metals released from non-radiological areas.

DOE subsequently proposed revisions to DOE Order 5400.5 that, if implemented, would permit the unrestricted release of scrap metals for recycling only if the metal had no residual radioactivity as determined by measurement or process knowledge. These proposed order revisions were made available for public comment (65 FR 60653, October 12, 2000). After considering comments received on the proposed revisions, DOE decided on January 19, 2001 to: (1) Continue the suspension on unrestricted release for recycling of scrap metals from radiological areas, and (2) suspend work on DOE Order 5400.5 revisions governing unrestricted release for recycling of metals, pending the preparation of a PEIS to allow an open discussion of concerns about such releases. (**Note:** This Notice of Intent to Prepare a PEIS is being provided to all persons who indicated they were interested in the proposed DOE Order 5400.5 revisions.)

DOE's materials release procedures that are not affected by the January 19, 2001, decision continue to be implemented. For example, all materials, including metals, located outside a DOE radiological area can be reused or recycled if the requirements established for radiological protection of the public (DOE Order 5400.5) are met. These same radiological protection requirements continue to govern the unrestricted release of surplus metal items from radiological areas for reuse rather than recycling.

DOE is reviewing international and national consensus-based radiological standards for unrestricted release of materials and is monitoring and, as appropriate, participating in related NRC and National Academy of Sciences (NAS) activities, but DOE has no specific plans for changing its own standards until at least the NAS has completed the current studies. DOE is, however, implementing procedural improvements for the existing release requirements in DOE Order 5400.5 to: (1) Clearly define areas and activities that can potentially radiologically contaminate materials; (2) clearly define radiological release criteria, including measurement and survey protocols; (3) ensure that released materials meet DOE requirements; and (4) improve DOE reporting on releases of material from radiological control. DOE also intends to prepare a PEIS on its policies relating to scrap metal recycling to allow for full and open dialogue with the public on the issues. While this PEIS is being prepared, DOE will continue the July 2000 suspension on recycling of scrap metal from radiological areas into commerce, unless DOE makes a specific determination that the metal could not have been radioactively contaminated by DOE activities or operations.

Purpose and Need for Action

The PEIS announced in this notice is being prepared in response to DOE's January 19, 2001, decision. DOE will use the PEIS as a basis for decisions

concerning disposition policies for the recycle of scrap metals that may have residual surface radioactivity.

In focusing the PEIS specifically on scrap metals, DOE considered whether the scope of the PEIS should include all potentially radioactive materials that might be released from DOE sites, including large volumes of concrete and soils. Recycled metals have comprised approximately one-quarter of the total amount of materials recycled by DOE. The options for reuse, recycling or disposal, however, vary widely among material categories. For example, the management of scrap metals and the steps by which they are recycled into commerce, and the consequent means by which people and the environment could be exposed to any residual radioactivity, are quite different from the corresponding process for other materials, such as soils, which might typically be used in highway construction projects rather than in manufactured products.

In addition, radiation exposure pathways for the various metal and non-metal materials are not likely to be connected, cumulative, or similar, and assessments to date indicate that potential radiation exposure from any of these materials (including metals) is very small, both individually and collectively.

DOE estimates that surplus metals currently in inventory and to be generated over the next 35 years will total more than a million tons, a significant fraction of which will contain no residual radioactivity. DOE estimates that approximately 30–50% of its surplus metals will be scrap metals that will be candidates for recycling, based on economic considerations. DOE's Environmental Management Program's decontamination and decommissioning activities are responsible for the majority of the current inventory of scrap metals, and will also generate the majority of the scrap metals that will become available for recycling in the future.

The current and future expected surplus metals are mostly carbon steel, stainless steel, and nickel. There will be more surplus carbon steel than all other surplus metals combined. Unlike the steels proposed to be addressed in the EIS, all the nickel is considered to be volumetrically contaminated, and is not covered in the proposed scope of the PEIS. There are smaller quantities of other metals [e.g., copper, aluminum, lead, and precious metals (silver, gold, platinum)] that will be addressed in the PEIS. More than half of the current and forecast scrap metal amounts, including almost all of the scrap nickel, will result from the decommissioning of the Gaseous Diffusion Plants in Ohio, Kentucky and Tennessee. The estimated average generation rates through the year 2015 are 50,000 tons per year for carbon steel, 4,000 tons per year for stainless steel, and 3,000 tons per year for nickel.

DOE proposes that the PEIS would not address volumetrically contaminated nickel and other metals, which remain subject to a moratorium on their release pending the outcome of NRC's review process. DOE plans to focus the PEIS primarily on those metals that represent the greatest potential for impacts due to their volumes, i.e., carbon steel and stainless steel. By focusing on the recycle of non-volumetrically contaminated scrap metals, DOE believes it can most effectively evaluate the benefits and risks of specific disposition alternatives. This would present the public and DOE with relevant, timely, and immediately useful information for resolving the most pressing and significant of DOE's material disposition issues.

For all these reasons, DOE believes the greatest value to the Department and the public for this effort will be to focus this PEIS on the recycle of scrap metals with potential for residual surface radioactivity.

As noted above, similar issues are being evaluated through the ongoing process being conducted by the NRC and the NAS to address technical requirements and NRC standards for unrestricted release of radioactively contaminated solid materials. DOE expects that this PEIS will be useful to NRC and NAS, and DOE also intends to incorporate into the PEIS any timely and relevant information developed by NRC and NAS.

Preliminary Alternatives

Consistent with NEPA implementation requirements, the PEIS will assess the range of reasonable alternative policies regarding disposition of DOE scrap metals with any potential for residual surface radioactivity. Each alternative identified below is a strategy or policy option. DOE welcomes comments on these or other reasonable alternatives and on the identification of a preferred alternative.

No Action Alternative (*Continue Current Suspension on Unrestricted Release for Recycling of Scrap Metals from Radiological Areas*)—The No Action Alternative would continue the status-quo established by the July 13, 2000, DOE policy decision, suspending the unrestricted release for recycling of scrap metals from DOE radiological areas. Such metals would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal. Disposal would be either as radioactive waste at DOE or non-DOE facilities, in accordance with DOE's requirements for the applicable waste classification (i.e., transuranic, low-level, or mixed low-level), or as non-radioactive waste at appropriate facilities (industrial landfills, sanitary landfills, or hazardous waste disposal sites), depending upon the waste's characteristics after final treatment. Disposal in an industrial or sanitary landfill or a hazardous waste disposal facility would be considered a restricted release from radiological control.

Alternative 1 (*Unrestricted Release for Recycling of Scrap Metals under Requirements in DOE Order 5400.5, Radiation Protection of the Public*)—This alternative would permit unrestricted release of scrap metals from DOE radiological areas and scrap metals outside radiological areas that may have residual surface radioactivity, through application of radiological control standards currently incorporated in DOE Order 5400.5 (August 1993). This was the practice DOE followed before the July 2000 suspension. Such metals that could not meet these requirements would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal, as described above under the No Action Alternative.

Alternative 2 (*Unrestricted Release for Recycling of Scrap Metals for Recycle under Alternative Standards*)—This broad alternative would permit unrestricted release of scrap metals from DOE radiological areas and scrap metals outside radiological areas that may have residual surface radioactivity, if they satisfy specific radiation protection requirements other than those in DOE Order 5400.5. DOE would analyze several alternative threshold radiological criteria for unrestricted release. Alternative radiological criteria that could be considered include international (e.g., International Atomic Energy Agency, European Commission) and U.S. (e.g., NRC, American National Standards Institute, National Council on Radiation Protection and Measurements) standards for unrestricted release. In addition, a more stringent standard that requires ''radioactivity indistinguishable from background'' will be evaluated. Under each alternative standard, metals that do not satisfy the standard for unrestricted release would be dispositioned through continued radiological control, restricted release for recycle, onsite

storage, or disposal, as described above under the No Action Alternative.

Alternative 3 (*No Unrestricted Release for Recycling of Scrap Metals with Potential for Residual Surface Radioactivity*)—This alternative would permit the unrestricted release for recycling of scrap metals from DOE sites only if there is clear process knowledge, confirmed by monitoring, that there is no potential for residual surface radioactivity. Metals that do not meet this condition would be dispositioned through continued radiological control, restricted release for recycle, onsite storage, or disposal, as described above under the No Action Alternative.

Preliminary Identification of Issues

DOE intends to address the issues listed below in the process of considering the potential impacts of alternatives for disposition of scrap metals from radiological areas or scrap metals outside radiological areas that may have residual surface radioactivity. DOE invites comment from Federal agencies, Native American tribes, state and local governments, and the public on these and any other issues that should be considered in the PEIS:

- Potential impacts on public health from using products made from recycled metals.
- Improvements in DOE's procedures for unrestricted release of scrap metals.
- Potential impacts from alternative approaches for determining which scrap metals on DOE sites may have come from radiological areas or may have residual radioactivity. Such approaches include: (1) Using records pertaining to the locations of the metal during its use and the circumstances to which it was subjected, (2) conducting radiation surveys of scrap metals, (3) using records to determine appropriate radiation survey strategies, and (4) integrating elements of each approach into formal procedures or protocols.
- Potential effects on air, soil, and surface and ground water from recycling, storage and disposal activities, and from reasonably foreseeable accidents associated with these activities.
- Potential impacts on ecological resources, including threatened and endangered species, floodplains, and wetlands.
- Potential health impacts on the public and DOE's workers from exposure to radiological and chemical hazards during routine recycling, storage or disposal operations and reasonably foreseeable accidents.
- Radiological considerations related to the management of recycled materials by both the commercial scrap metal recycle and metal-producing industries, including potential impacts on workers.
- Potential environmental and health impacts that might be avoided by recycling metals, as opposed to their disposal.
- Potential effects on industrial applications of recycled metals.
- Socioeconomic impacts.
- Compliance with applicable Federal, state and local requirements and agreements, and consistency with U.S. and international standards for unrestricted release.
- Potential effects on radioactive waste and non-radioactive waste disposal site construction and operation if scrap metals that might otherwise be recycled were instead disposed of.
- Potential effect on DOE's environmental cleanup activities and related costs.
- Pollution prevention, waste minimization, and energy and water use reduction technologies to reduce the use of energy, water, and hazardous substances, and to mitigate environmental impacts during activities to disposition scrap metals from DOE sites.
- Impacts on cultural and historic resources.
- Cumulative environmental impacts of past, present and reasonably foreseeable future actions.
- Irreversible and irretrievable commitment of resources.

In addition, DOE requests that the public provide information on, or responses to, specific topics such as:

- What other impacts beyond those identified above should DOE consider?
- Information sources for evaluating environmental impacts associated with the recycling of scrap metals that may have residual surface radioactivity.
- What specific health and safety impacts have arisen from implementing DOE's metals recycling program?
- What specific harm could occur to the general public or recycle industry workers under implementation of DOE Order 5400.5 or other standards for unrestricted release of scrap metals?

Related NEPA Documents

This PEIS will consider the information and analyses in the following DOE NEPA documents, which can be found at DOE Field Office Public Reading Rooms, the Environmental Management Information Center (800 736–3282), the DOE Environmental Management website (http://www.em.doe.gov/index4.html), or the DOE NEPA website (*http://tis.doe.gov/nepa/*).

- Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/PEIS–0200–F, May 1997).
- Sale of Radioactively Contaminated Scrap Nickel Ingots at the Paducah Gaseous Diffusion Plant, Paducah, KY (DOE/EA–0994, April 1996).
- Recycling of Slightly Activated Copper Coil Windings from the 184-inch Cyclotron at Lawrence Berkeley Laboratory, Berkeley, California (DOE/EA–0851, June 1993).

Public Scoping Process

DOE will hold meetings in the following locations.

July 31, 2001

2:00–5:00 pm
8:00–11:00 pm
North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29841

August 2, 2001

2:00–5:00 pm
8:00–11:00 pm
American Museum of Science & Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830

August 7, 2001

2:00–5:00 pm
8:00–11:00 pm
Holiday Inn Oakland Airport, 500 Hegenberger Road, Oakland, California 94621

August 9, 2001

2:00–5:00 pm
8:00–11:00 pm
Red Lion Hotel, 802 George Washington Way, Richland, Washington 99352

August 14, 2001

2:00–5:00 pm
8:00–11:00 pm
Omni Netherland Plaza Hotel, 35 West Fifth Street, Cincinnati, Ohio 45202

August 16, 2001

2:00–5:00 pm
8:00–11:00 pm
Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington Virginia 22202

At 1:00 and 7:00 pm prior to each public scoping meeting, an information/open house will be offered to persons interested in radiation fundamentals, including sources and health effects, not specifically related to metal recycling.

At each scoping meeting, the public will have the opportunity to ask questions and to comment orally or in writing on the scope of the PEIS, including the alternatives and issues that DOE should consider. Also, at these meetings, DOE plans to provide background information on the program and the PEIS preparation schedule.

To ensure that the full range of issues related to the preparation of this PEIS is addressed, DOE is inviting comments on the proposed scope of the PEIS from all interested parties during the scoping period. Written comments should be addressed to Mr. Kenneth G. Picha, Jr. as provided above under the heading **ADDRESSES.** Agencies, organizations, and the general public are also invited to present oral comments at the public scoping meetings to be held at the places listed above. Written and oral comments will be given equal consideration. To ensure that everyone has an adequate opportunity to speak, each speaker at a scoping meeting will be allotted five minutes. Depending on the number of persons who ask to speak, more time may be provided for speakers representing organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Written comments will also be accepted at the meetings. Speakers at the scoping meetings are encouraged to provide written versions of their oral comments for the record.

DOE will record and prepare transcripts of the oral comments received during the public scoping meetings. Interested persons will be able to receive copies of the transcripts and written comments by requesting this information from Mr. Picha (see **ADDRESSES**).

Preliminary PEIS Schedule

DOE plans to complete the Draft PEIS by January 2002. DOE will announce the availability of the Draft PEIS in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the Final PEIS, which DOE plans to issue by about July 2002. DOE will issue a Record of Decision no sooner than 30 days after publication of the Environmental Protection Agency's notice of availability of the Final PEIS.

Issued in Washington, D.C, on July 6, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–17438 Filed 7–11–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–98–000]

American Ref-Fuel Company of Niagara, L.P., Complainant v. Niagara Mohawk Power Corporation, Respondent; Notice of Complaint

July 6, 2001.

Take notice that on July 2, 2001, American Ref-Fuel Company of Niagara, L.P. filed a complaint against Niagara Mohawk Power Corporation pursuant to Sections 206 and 306 of the Federal Power Act, directing Niagara Mohawk to cease its unjust, unreasonable, unduly discriminatory and preferential practice of denying transmission service.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before July 16, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before July 16, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17457 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2008–001]

The Detroit Edison Company; Notice of Filing

July 6, 2001.

Take notice that on June 22, 2001, Detroit Edison Company (Detroit Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreements for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Wisconsin Electric Power Company dated as of February 13, 2001. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of July 20, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 16, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17458 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–62–029]

ISO New England Inc.; Notice of Filing

July 6, 2001.

Take notice that on June 29, 2001, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Substitute Original Sheet 1002A of New England Power Pool FERC Electric Rate Schedule No. 6, a blackline of Sheet 1002A showing the correction, and a changed page 32 to the filing letter reflecting the correction to the electrical units in the formula.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17456 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2459–001]

New York Independent System Operator, Inc.; Notice of Filing

July 6, 2001.

Take notice that on July 3, 2001, New York Independent System Operator, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) pages with corrected page numbers that were incorrectly numbered in its June 29, 2001 filing of tariff revisions to its Market Administration and Control Area Services Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 13, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17459 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2489–000]

New York Independent System Operator, Inc.; Notice of Filing

July 6, 2001.

Take notice that on July 2, 2001, the New York Independent System Operator, Inc. (NYISO), at the Direction of its independent Board of Directors, made an exigent circumstances filing to propose changes to its Market Administration and Control Area Services Tariff (Services Tariff) designed to implement certain market power mitigation penalties. The NYISO has requested that the Commission act on this filing in an expedited manner. The NYISO has also requested that the Commission waive its usual 60-day notice requirement and make the filing effective on July 3, 2001.

The NYISO has served a copy of the filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, on the New York State Public Service Commission, on the electric utility regulatory agencies in New Jersey and Pennsylvania and on all parties in Docket No. ER01–2076–000. The NYISO has also emailed a copy of this filing to all of the subscribers to the NYISO's Technical Information Exchange list.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 16, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–17460 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–123–000, et al.]

Duke Energy Vermillion, LLC, et al.; Electric Rate and Corporate Regulation Filings

July 5, 2001.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Vermillion, LLC, Duke Energy Madison, LLC, CinCap VII, LLC, Duke Energy Trenton, LLC, CinCap VIII, LLC

[Docket No. EC01–123–000]

Take notice that on June 28, 2001, Duke Energy Vermillion, LLC (Duke Vermillion), Duke Energy Madison, LLC (Duke Madison), CinCap VII, LLC (CinCap VII), Duke Energy Trenton, LLC (Duke Trenton) and CinCap VIII, LLC (CinCap VIII) (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act (FPA) for authorization of the transfer of Duke Energy North America, LLC's (DENA) indirect interests in Duke Madison and CinCap VII to CinCap VIII and the transfer of Cinergy Corporation's (Cinergy) indirect interest in Duke Vermillion to Duke Trenton. The transfer may constitute the indirect disposition of FPA jurisdictional facilities associated with the facilities owned by Duke Vermillion, Duke Madison and CinCap VII (*e.g.,* market-based rate schedules of Duke Vermillion, Duke Madison and CinCap VII and the sales agreements entered into thereunder, limited transmission interconnection facilities and jurisdictional books and records).

Comment date: August 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company, PacifiCorp

[Docket No. EC01–125–000]

Take notice that on June 28, 2001, Arizona Public Service Company (APS) and PacifiCorp tendered for filing a joint application for authorization for APS to transfer to PacifiCorp a 10.4 mile segment of transmission line located in Arizona, which line is a segment of a longer single-circuit 230 kV transmission line located in both Arizona and Utah. The subject facility runs from the switchyard at Glen Canyon Dam in Coconino County, which is owned and operated by the United States Bureau of Reclamation, to the Arizona-Utah border. The 230 kV transmission line continues on to PacifiCorp's Sigurd Substation.

Comment date: July 19, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Tri-State Power, LLC

[Docket No. EG01–252–000]

Take notice that on July 2, 2001, Tri-State Power, LLC (TSP) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

TSP is a Colorado limited liability company. The Eligible Facilities are two electric generating stations located near Limon, Colorado and Brighton, Colorado. Each station consists of two gas-fired combustion turbines with a nominal rating of 70 MW each and associated step-up transformers, circuit breakers and related equipment.

Comment date: July 26, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC

[Docket No. ER01–2462–000]

Take notice that on June 26, 2001, PSEG Fossil LLC (PSEF Fossil), PSEG Nuclear LLC (PSEG Nuclear), and PSEG Energy Resources & Trade LLD (ER&T) (collectively the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a Joint Application for Waiver of Filing Requirements relating to requirements contained in Parts 35, 41, 45, 101 and 141 of the Commission's regulations.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation; Orange & Rockland and Utilities, Inc.; Power Authority of the State of New York; and Rochester Gas and Electric Corporation, New York Power Pool

[Docket Nos. ER97–1523–064, OA97–470–059 and ER97–4234–057]

Take notice that on June 29, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) made a compliance filing consisting of an Amended and Restated Transmission Agreement with the Power Authority of the State of New York in conformance with the Commission's Letter Order in these proceedings dated May 30, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER01–2473–000]

Take notice that on June 29, 2001, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to revise PJM's authority to cost cap ''must-run'' generators to enable PJM to cost cap such units on a real-time as well as day-ahead basis.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER01–2474–000]

Take notice that on June 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement for Long-Term Firm Out Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's regulations. Acceptance of this Service Agreement will recognize the provision of Long-Term Firm Out Service to Williams Energy Marketing & Trading Co., in accordance with the provisions of the NEPOOL Open Access Transmission Tariff, as amended and supplemented.

An effective date of July 1, 2001 for commencement of transmission service has been requested.

Copies of this filing were sent to the NEPOOL Participants, the New England state governors and regulatory commissions, and all parties to the transaction.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company LLC

[Docket No. ER01–2475–000]

Take notice that on June 29, 2001, MidAmerican Energy Company LLC (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission) under its market-based rate tariff a long-term service agreement, the Service Agreement between MidAmericanEnergy Company and Principal Generation Plant, LLC Under Producers.

MidAmerican requests an effective date of May 31, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Southwest Power Pool, Inc.

[Docket No. ER01–2476–000]

Take notice that on June 29, 2001, Southwest Power Pool, Inc. (SPP)

submitted for filing two executed service agreements for Firm Point-to-Point Transmission Service with Tenaska Power Service Company (Transmission Customer), designated as SPP Service Agreement Nos. 554 and 555.

SPP seeks an effective date of June 1, 2001 for Service Agreement No. 554, and January 1, 2002, for Service Agreement No. 555.

A copy of this filing was served on the Transmission Customer.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER01–2477–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with El Paso Merchant Energy, L.P. (El Paso) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems.

FPC requests this Agreement to become effective on May 31, 2001.

A copy of the filing was served on El Paso.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas & Electric Company

[Docket No. ER01–2478–000]

Take notice that on June 29, 2001, Southern Indiana Gas & Electric Company (SIGECO) tendered for filing a Service Agreement for Network Integration Transmission Service (Service Agreement) and a Network Operating Agreement (NOA) for the City of Huntingburg, Indiana. The Service Agreement and the NOA are being filed under SIGECO's FERC Electric Tariff, Second Revised Volume No. 3.

SIGECO requests that the Commission allow the Service Agreement and the NOA to become effective on June 1, 2001.

Copies of the filing were served upon the Indiana Utility Regulatory Commission and the City of Huntingburg, Indiana.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Mirant Zeeland, LLC

[Docket No. ER01–2479–000]

Take notice that on June 29, 2001, Mirant Zeeland, LLC (Mirant Zeeland) filed with the Federal Energy Regulatory Commission (Commission) filed a Tolling Agreement dated as of May 3, 2000, between SEI Michigan, LLC, (now Mirant Zeeland, LLC) and Southern Company Energy Marketing LP (now Mirant Americas Energy Marketing, LP).

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER01–1895–001]

Take notice that on June 29, 2001, Tampa Electric Company (Tampa Electric) refiled its open access transmission tariff (OATT) in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order dated May 30, 2001, in Docket No. ER01–1895–000. Except for the updated transmission loss factor accepted in that letter order, the filing does not change the text of the preexisting OATT.

A copy of the compliance filing has been served on each person designated on the official service list in this docket, each party to a service agreement under the preexisting OATT, and the Florida Public Service Commission.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Valley Electric Association, Inc.

[Docket No. ER01–1229–002]

Take notice that on June 29, 2001, Valley Electric Association, Inc. tendered for filing a corrected tariff sheet and other information in compliance with the Commission's June 14, 2001 order in the above-captioned proceeding.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Valley Electric Association, Inc.

[Docket No. ER01–2455–000]

Take notice that on June 29, 2001, Valley Electric Association, Inc. tendered for filing a notice of cancellation with respect to its Rate Schedule FERC No. 15.

Valley Electric Association request notice of cancellation be effective July 2, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER01–2457–000]

Take notice that the California Independent System Operator Corporation (ISO), on June 29, 2001, submitted an informational filing as to the new transmission Access Charge rates that will be in effect on July 1, 2001.

The ISO states that this filing has been served the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including Vernon, with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER01–2458–000]

Take notice that on June 29, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing as Service Agreement number 1 to its FERC Electric Tariff, First Revised Volume No. 7. Service Agreement No. 1 relates to the sale of electric power at wholesale to the California Department of Water Resources (Department) at prices agreed to by SDG&E and Department in accordance with SDG&E's FERC Electric Tariff, First Revised Volume No. 7. SDG&E states that copies of the filing have been served on Department and on the California Public Utilities Commission.

SDG&E requests an effective date of June 1, 2001 for the agreement.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Energy Marketing Company

[Docket No. ER01–1810–002]

Take notice that on June 29, 2001, Ameren Energy Marketing Company (AEM) submitted the compliance filing required by the Commission's June 14, 2001 order in this proceeding. AEM requests an effective date of June 1, 2001 for the changes reflected in this filing. A copy of this filing was served on all parties on the service list, and on all affected state commissions.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Walton Electric Membership Corporation

[Docket No. ER01–1400–002]

Take notice that on June 29, 2001, Walton Electric Membership

Corporation (Walton) tendered for filing Schedules D and 4.4 of the Power Supply and Energy Call Agreement by and between Williams Energy Marketing & Trading Company and Walton as requested by Commission Staff.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER01–1698–003]

Take notice that on June 29, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Savannah Electric) (collectively referred to as Southern Company), filed their compliance filing to the Commission's Order in Southern Company Services, Inc., 95 FERC ¶ 61,307. In that order, the Commission accepted for filing an unexecuted Interconnection Agreement between Savannah Electric and Effingham County Power LLC. In addition, the Commission also ordered that Southern Company amend its Interconnection Procedure to make certain revisions to the scope of Interconnection Studies that it performs.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power Corporation

[Docket No. ER01–2466–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Reliant Energy Services, Inc. (Reliant) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on Reliant.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER01–2470–000]

Take notice that on June 29, 2001 New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, an amendment to Rate Schedule 200 filed with FERC corresponding to a Facilities Agreement with the New York Power Authority (NYPA). The proposed amendment would increase revenues by $2,480.37 for the period from September 1, 2001 through August 31, 2002. Copies of the filing were served upon the New York Power Authority and the Public Service Commission of the State of New York.

NYSEG requests an effective date of September 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power Corporation

[Docket No. ER01–2465–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with NRG under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on NRG.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ER01–2292–000]

Take notice that PacifiCorp on June 29, 2001, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a request to defer actions on PacifiCorp's original filing in this proceeding until further notice. Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: July, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Xcel Energy Services, Inc.

[Docket No. ER01–1311–001]

Take notice that on June 29, 2001, Xcel Energy Services, Inc., on behalf of Public Service Company of Colorado (PSCo), submitted for filing an Amended Power Sales Agreement between PSCo and Cheyenne Light, Fuel and Power Company.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Idaho Power Company

[Docket No. ER01–1687–001]

Take notice that on June 29, 2001, Idaho Power Company tendered for filing, under its Market-Based Rates Tariff, Rate Schedule Designations as required by Order No. 614 pursuant to the Commission's Letter Order dated May 29, 2001 in the above-captioned docket.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Nevada Power Company

[Docket No. ER01–1589–002]

Take notice that on June 29, 2001, Nevada Power Company (Nevada Power) tendered for filing a revision to the Regulation and Frequency Response Service provisions of Nevada Power's Electric Service Coordination Tariff in compliance with the Order issued in June 1, 2001 in this Docket No. ER01–1589–000. Copies of this filing have been served upon those person on the Commission's official service list compiled in Docket No. ER01–1589–000.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Energy Corporation

[Docket No. ER01–2469–000]

Take notice that on June 29, 2001, Duke Energy Corporation filed an amended, unexecuted Network Integration Transmission Service Agreement between Duke Power Co., Cinergy Services, Inc. and the Commissioners of Public Works of the City of Greenwood, South Carolina.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC (AE Supply)

[Docket No. ER01–2468–000]

Take notice that on June 29, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (AE Supply), filed Electric Rate Schedule FERC No. 10 (Rate Schedule) with Monongahela Power Company dba Allegheny Power in order for Allegheny Power to supply default service to its Ohio customers. AE Supply has requested a waiver of notice to make the Rate Schedule effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Southwest Power Pool, Inc.

[Docket No. ER01–2471–000]

Take notice that on June 29, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing eight executed service agreements for Firm Point-to-Point Transmission Service with Aquila Energy Marketing Corporation (Transmission Customer). SPP seeks an effective date of June 1, 2001 for each of these service agreements.

A copy of this filing was served on the Transmission Customer.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17427 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2467–000, et al.]

Florida Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 6, 2001.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER01–2467–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with FPL Energy Marketing (FPL Energy) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on May 31, 2001.

A copy of the filing was served on FPL Energy.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER01–1896–001]

Take notice that on June 29, 2001, Tampa Electric Company (Tampa Electric) refiled its transmission service agreements with Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale), and interconnection agreements with Cargill and Auburndale, in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter order date May 30, 2001.

Copies of the compliance filing have been served on the persons designated on the official service list in this docket, Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER01–2472–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Mirant Corporation (Mirant) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. A copy of the filing was served on Mirant.

FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER01–2480–000]

Take notice that on June 29, 2001, Florida Power Corporation (FPC) filed an executed Transmission Service System Impact Study Agreement (Agreement) with Seminole Electric Cooperative, Inc. (Seminole) under FPC's open access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 6. FPC files this Agreement in conjunction with the joint transmission system impact study process that FPC, Florida Power & Light Company and Tampa Electric Company have agreed to undertake to handle the pending transmission service requests that impact these three utility systems. A copy of the filing was served on Seminole.

FPC requests waiver of the Commission's notice of filing requirements to permit this Agreement to become effective on June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Exelon Generation Company, LLC, Exelon Energy Company

[Docket No. ER01–2481–000]

Take notice that on June 29, 2001, Exelon Generation Company, LLC (Exelon Generation), and Exelon Energy Company (Exelon Energy) submitted for

filing a long-term power sales service agreement between Exelon Generation and Exelon Energy under which the parties will make sales of capacity and energy to each other.

Excelon Generation and Exelon Energy request that the Service Agreement be accepted for filing effective as of June 1, 2001.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. DPL Energy, LLC, DPL Energy, Inc.

[Docket No. ER01–2483–000]

Take notice that on June 29, 2001, DPL Energy, LLC (DPLE–LLC) and DPL Energy, Inc. (DPLE-Inc.) tendered for filing a Notice of Succession stating that DPLE–LLC is adopting and succeeding to the jurisdictional rate schedules and supplements thereto of DPLE-Inc.

Comment date: July 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER01–2484–000]

Take notice that on July 2, 2001, Cinergy Services, Inc. tendered for filing an Interconnection Agreement into by and between Cinergy Services, Inc. (Cinergy) and CinCap VII, LLC (CinCap VII), which is dated June 28, 2001. The Interconnection Agreement between the parties provides for the interconnection of a generation station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and CinCap VII.

Cinergy and CinCap VII are requesting an effective date of June 29, 2001.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER01–2485–000]

Take notice that on July 2, 2001, Tampa Electric Company tendered for filing notices of termination of its interchange contracts with the City of Wauchula, the City of Fort Meade, and the Tennessee Valley Authority, as well as specified service schedules and letters of commitment under its interchange contracts with 17 other utilities. Tampa Electric proposes that the terminations be made effective on August 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the parties to the affected interchange contracts and the Florida and Georgia Public Service Commissions.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER01–2486–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 2, 2001, tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Second Revised Volume No. 2). Wisconsin Electric respectfully requests an effective date July 1, 2001.

Copies of the filing have been served on American Transmission Company LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER01–2487–000]

Take notice that on July 2, 2001, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.13 executed Network Integration Transmission Service Agreements with Luzenac America, Inc. (Luzenac) and ExxonMobil Corporation (ExxonMobil); and an executed Firm Point-To-Point Transmission Service Agreement with The Montana Power Power Marketing Company (Montana Power Power Marketing), all under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Luzenac, ExxonMobil, and Montana Power Power Marketing.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER01–2488–000]

Take notice that on July 2, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Kentucky Power Company and Kentucky Mountain Power, L.L.C. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of August 31, 2001. Copies of AEP's filing have been served upon the Kentucky Public Service Commission.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Umatilla Electric Cooperative Association

[Docket No. ER01–2490–000]

Take notice that on July 3, 2001, Umatilla Electric Cooperative Association submitted for filing an open access transmission tariff and accompanying rates.

Comment date: July 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Company, Boston Edison Company, Commonwealth Electric Company

[Docket Nos. ER01–1695–002; ER01–1705–002; and ER01–1782–002]

Take notice that on July 2, 2001, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (NSTAR Companies) tendered for filing Attachment K to their respective Open Access Transmission Tariffs, ''Standard Form of Interconnection Agreement'' in compliance with the Commission's June 1, 2001 order in the above-referenced dockets.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. ISO New England Inc.

[Docket No. ER01–316–003]

Take notice that on July 2, 2001, ISO New England Inc. refiled its Index of Customers for the first quarter of 2001 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Electric Generation Co.

[Docket Nos. ER01–602–008 and ER01–1773–001]

Take notice that on July 2, 2001, Southern Electric Generation Company tendered for filing revised original tariff sheets compliant with the formatting requirements of Commission Order No. 614.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01–602–009]

Take notice that on July 2, 2001, in compliance with Commission letter orders dated January 21, 2001 and June 1, 2001, Southern Company Services, Inc. (SCS), as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies), tendered for filing rate schedules and/or associated sheets compliant with Commission Order No. 614 for certain Southern Operating Companies Rate Schedules. These Rate Schedules are Georgia Power First Revised Rate Schedule FERC No. 803 and Southern Operating Companies First Revised Rate Schedules FERC Nos. 15, 30, 33, 51, 53, 59 and 62.

Comment date: July 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–17454 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–4–000, CP01–5–000, CP01–8–000]

Maritimes & Northeast Pipeline, L.L.C., Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Phase III/Hubline Pipeline Project

July 6, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. (Maritimes), and Algonquin Gas Transmission Company (Algonquin) (collectively the Applicants) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including major route alternatives; and route variations, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- About 24.8 miles of new, primarily onshore natural gas pipeline (23.8 miles of 30-inch-diameter pipeline and 1.0 miles of 24-inch-diameter pipeline) referred to as the Maritimes Phase III pipeline;
- About 29.4 miles of new, primarily offshore natural gas pipeline (24-inch-diameter pipeline) referred to as the HubLine pipeline;
- About 5.4 miles of new, primarily offshore natural gas pipeline (16-inch-diameter pipeline) referred to as the Deer Island Lateral; and
- Three new meter stations, four mainline valves, and related facilities.

The purpose of the proposed facilities would be to transport about 150,500 dekatherms per day of natural gas to five customers in Massachusetts and Connecticut. In addition, the project would provide leased capacity of 80,000 dekatherms per day of natural gas for Texas Eastern Transmission Corporation.

Joint State and Federal Review

On January 16, 2001, the Secretary of the Executive Office of Environmental Affairs for the Commonwealth of Massachusetts issued a Certificate on the Environmental Notification Form (state Certificate) for these projects. The Secretary determined that the projects require the preparation of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA).

In order to accomplish the goal of addressing the requirements of both the state and the Federal government in a ''single'' document, the Applicants intend to file the DEIS with the MEPA office along with supplemental materials (Supplement) that will respond to specific issues identified in the state Certificate and in the comments submitted on the Environmental Notification Form (ENF) that may not have been identified or specifically addressed in the DEIS. The Supplement will include an appendix containing ENF comment letters with indexed and narrative responses by the Applicants. The Supplement and the DEIS are collectively intended to comprise the Draft EIR for purposes of review under MEPA.

The Applicants intend to file the Supplement with the MEPA office and the Commission as soon as practicable following the issuance of the DEIS so as to match as closely as possible the state and Federal comment periods. The Applicants have stated that they will consider, at the appropriate time, requesting an extension of either comment period so that commentors will have the opportunity to file a single set of comments with both the Commission and MEPA.

This DEIS has been distributed to the commentors and others listed in the state Certificate.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas 2, PJ11.2;
- Reference Docket Nos. CP01–4–000, CP01–5–000 and CP01–8–000; and

• Mail your comments so that they will be received in Washington, DC on or before August 27, 2001.[1]

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.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We will announce in a future notice, the location and time of at least one local public meeting to receive comments on the DEIS.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above. [2] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding. It has also been distributed to the commentors and others listed in the state Certificate.

[1] The front material in the DEIS incorrectly identifies September 3, 2001 as the end of the comment period.

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–17455 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 6, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1494–230.

c. *Date Filed:* May 31, 2001.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Dam.

f. *Location:* The proposed action is located on the Grand Lake O' The Cherokees in Section 7, Township 24 North, Range 23 East, in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mary E. Von Drehle, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409 Vinita, Oklahoma 74301, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Brian Romanek at (202) 219–3076.

j. *Deadline for filing comments and or motions:* August 17, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the specific project number (P–1494–230) on any comments or motions filed.

k. *Description of Request:* GRDA proposes to permit White Chapel Homeowners Association to reconfigure two docks and install a breakwater within the project boundary. Presently the docks have 14 boat slips and after construction there would be 18 boat slips. The docks would provide boat access and docking on the project reservoir for residents of the White Chapel community. The slips would be constructed adjacent to an area with about 30 existing boat slips that serve the same residential area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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.

n. 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. 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. 01–17461 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 6, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1494–231.

c. *Date Filed:* June 19, 2001.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Dam.

f. *Location:* The proposed action is located on the Grand Lake O'' The Cherokees in Section 12 Township 23 North, Range 22 East, in Drowning Creek, Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mary E. Von Drehle, Assistant General Counsel, Grand River Dam Authority, P.O. Box 409 Vinita, Oklahoma 74301, (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Brian Romanek at (202) 219–3076.

j. *Deadline for filing comments and or motions:* August 17, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the specific project number (P–1494–231) on any comments or motions filed.

k. *Description of Request:* The Grand River Dam Authority (GRDA) proposes to permit Hi-Lift Marina to add 15 boat slips to existing piers and to construct one new pier to accommodate 20 boat slips. A breakwater is also proposed to be constructed. The slips would be for the patrons of Hi-Lift Marina in the Fox Hollow/Drowning Creek area.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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.

n. 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. 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. 01–17462 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 6, 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.:* 12053–000.

c. *Date filed:* June 18, 2001.

d. *Applicant:* Nicholas E. Josten.

e. *Name of Project:* West Valley A and B Project.

f. *Location:* On the South Fork Pit River and West Valley Reservoir, in Modoc County, California. The project would use U.S. Forest Service land within the Modoc National Forest and the Bureau of Land Management's West Valley Dam and Reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Nick Josten, 2742 Saint Charles Avenue, Idaho Falls, ID 83404, (208) 524–3542.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 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. Copies of this filing are on file with the Commission and are available for public inspection. 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 under the ''e-Filing'' link.

Please include the project number (P–12053–000) 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.

k. *Description of Project:* The proposed project would consist of the following two developments:

West Valley A Development would consist of: (1) A proposed intake structure located in the irrigation canal, (2) a proposed 1,320-foot-long, 30-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 760 kW, (4) a proposed 6-mile-long 13.8 kV transmission line, and (5) appurtenant facilities.

West Valley B Development using the existing Bureau of Land Management's West Valley Dam would consist of: (1) A proposed intake structure located at the existing outlet works, (2) a proposed 2,800-foot-long, 30-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 680 kW, (4) a proposed 5-mile-long 13.8 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 6.2 GWh that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

m. 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.

n. 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.

o. 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.

p. 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.

q. 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.

r. 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'', ''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.

s. 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. 01–17464 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11641–003, 11649–003, 11654–003, 11657–003, 11660–003, 11668–003, 11771–003, 11772–003, 11776–003, 11821–003, 11822–002]

Universal Electric Power Corporation; Notice of Surrender of Preliminary Permits

July 6, 2001.

Take notice that Universal Electric Power Corporation, permittee for the projects listed below, has requested to surrender the preliminary permits because the proposed projects no longer meet their investment criteria.

Project No.	Project name	Stream	State	Expiration date
11641–003	Tionesta Dam	Tionesta Creek	PA	04–30–2002

Project No.	Project name	Stream	State	Expiration date
11649–003	Dierks Dam	Salina River	AR	07–31–2002
11654–003	Gillham Dam	Cossatot River	AR	05–31–2002
11657–003	Loyalhanna Dam	Loyahannak Creek	PA	07–31–2002
11660–003	Union City Dam	French River	PA	03–31–2002
11668–003	Bellville Dam	Sandusky River	OH	05–31–2002
11771–003	Delaware Dam	Olentangy River	OH	08–31–2002
11772–003	Blue Marsh Lake Dam	Tulpehocken Creek	PA	08–31–2002
11776–003	Rankin Lock & Dam	Tombigbee River	MS	08–31–2002
11821–003	Deer Creek Dam	Deer River	OH	12–31–2002
11822–002	Pishkum Dam	Deep Creek	MT	07–31–2003

The permittee filed the request on June 19, 2001, and the eleven preliminary permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

David P. Boergers,

Secretary.

[FR Doc. 01–17463 Filed 7–11–01; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, July 17, 2001 at 10 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, July 19, 2001 at 10 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.

Notice of Proposed Rulemaking on Brokerage Loans and Lines of Credit.

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. 01–17546 Filed 7–10–01; 11:42 am]

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.: 011463–005.

Title: East Coast North America to West Coast South America and Caribbean Cooperative Working Arrangement.

Parties: APL Co. PTE Ltd. Compania Chilena De Navegacion Interoceanica, S.A. Hamburg-Sud, d/b/a Crowley American Transport.

Synopsis: The proposed modification provides that the agreement will remain in effect until at least March 31, 2002.

Agreement No.: 011715–002.

Title: IMC/ATL Space Charter and Sailing Agreement.

Parties: Associated Transport Line, LLC, Colombia Express, LLC, Industrial Maritime Carriers (U.S.A.), Inc.

Synopsis: The proposed modification substitutes Associated Transport Line for Colombia Express as a party to the agreement and changes the name of the agreement accordingly.

Dated: July 6, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17420 Filed 7–11–01; 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 part 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

R&R Shipping, Incorporated, 162 Dongan Hills Avenue, Staten Island, NY 10305. Officer: Vincent Ruggiero, President (Qualifying Individual)

Ketras Cargo USA, Inc., 9280 NW 12th Street, Miami, FL 33172. Officer: Daniel Domingo Scocca, President (Qualifying Individual), Diego Miguel Cejas, Vice President

Palumbo USA Miami, Inc., 8405 NW 53rd Street, Suite B–220, Koger Center, Athens Bldg., Miami, FL 33166. Officer: John Trimarchi, President (Qualifying Individual)

Seabound Freight, Inc., 8209 NW 68th Street, Miami, FL 33166. Officer: Sandra Gonzalez, President (Qualifying Individual)

Newkor America, Inc., 4707 S. Hoover Street, Los Angeles, CA 90037. Officers: Jung Nam Choi, President, Se Hwan Park, Vice President (Qualifying Individual)

Global Alliance Logistics (L.A.) Inc., 9111 S. LaCienga Blvd., Suite 205, Inglewood, CA 90301. Officers: Bill Chan, President (Qualifying Individual), Ricky Fan, Vice President

Unico Logistics Inc., 147–04 183rd Street, Jamaica, NY 11413. Officer: Seung W. Kim (a.k.a. Sam Kim) (Qualifying Individual)

Key International Group, Inc. dba Key International Shipping, 539 E. Bixby Road, #22, Long Beach, CA 90807. Officers: Juliet Kong, President (Qualifying Individual), Stephen A. Taub, Vice President

Leric, Inc., 1930 Japonica Street, New Orleans, LA 70117. Officer: Gerald P. Risberg, President (Qualifying Individual)

Royal Cargo Line, Inc., 1936 NW. 82nd Avenue, Miami, FL 33126. Officers: Charlie Diaz, President (Qualifying Individual), Claudia Quintero, Vice President

Trans Logistics, Inc., 520 E. Carson Plaza Court, Suite 205, Carson, CA 90746. Officers: O. H. Kim, President, Daniel Lee, Vice President (Qualifying Individual)

ABCO International Freight (USA) Inc. dba ABCO Logistics, 746 Glasgow Avenue, Inglewood, CA 90301. Officers: Don Lucky, President, Michael Tsui, Chief Operating Officer (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Transtar Navigation (USA), Inc., 153–A Utah Avenue, South San Francisco, CA 94080. Officer: Alix K. Co, President (Qualifying Individual)

Hepta Run, Inc., 6515 Corporate Drive, Suite R, Houston, TX 77036. Officers: Mike (Wai) Fan, Chief Executive Officer (Qualifying Individual) Ed Tseng, President

Bayanihan Cargo International, Inc. dba Bayanihan Cargo, 925 Linden Avenue, Unit D, South San Francisco, CA 94080. Officers: Manuel A. Espinosa, President/General Manager (Qualifying Individual), Amparo A. Espinosa, Vice President

Load Group International Inc. dba Bosmas Int. Inc., 8378 NW. 68th Street, Miami, FL 33166. Officer: Hermann Lange Mosquera, President (Qualifying Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

MFI International Forwarding, Inc., 3460 N. Delaware Avenue, Suite 104, Philadelphia, PA 19134. Officers: Thomas J. Tobin, President (Qualifying Individual) Joseph Centanni III, Vice President

Pacmil Logistics 6155 Cornerstone Court East, Suite 100, San Diego, CA 92121. Officers: Habib Rayes, President, Sammy Chou, Secretary (Qualifying Individual)

Caterpillar Logistics Services, Inc., 100 NE Adams Street, Peoria, IL 61629. Officers: William F. Springer, President, Michael L. Lesko, Assistant Secretary (Qualifying Individual)

Global Logistics Management, LLC dba Global Logistics Management, 6633 Fence Row Court, Caledonia, MI 49316. Members: Lina Karadsheh, Member and Manager, Ryan Karadsheh, Member

Restricted Article Specialists, Inc., 844 Foster Avenue, Bensenville, IL 60101. Officers: Nicholas Ciolli, President, Denise Weidner, Secretary (Qualifying Individual)

Dated: July 6, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–17419 Filed 7–11–01; 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 August 6, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Spector Holdings Management, LLC, San Antonio, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of Spector Holdings Limited Partnership, San Antonio, Texas, and thereby indirectly acquire voting shares of Luling Bancshares, Inc., Luling, Texas, Luling Delaware Financial Corporation, Dover, Delaware, and Citizens State Bank, Luling, Texas.

In connection with this application, Spector Holdings Limited Partnership, San Antonio, Texas, has applied to become a bank holding by acquiring 57.9 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire voting shares of Luling Delaware Financial Corporation, Dover, Delaware, and Citizens State Bank, Luling, Texas.

In connection with this application, Luling Bancshares, Inc., Luling, Texas, and Luling Delaware Financial Corporation, Dover, Delaware, have applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Luling, Texas.

Board of Governors of the Federal Reserve System, July 6, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–17415 Filed 7–11–01; 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 August 6, 2001.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dacotah Banks, Inc., Aberdeen, South Dakota; to acquire 100 percent of the voting shares of F&M Bank Holding Company of Valley City, Inc., Valley City, North Dakota, and thereby indirectly acquire voting shares of Farmers & Merchants Bank of Valley City, Valley City, North Dakota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Cornerstone Bancshares, Inc., Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone Bank, Overland Park, Kansas (in organization).

Board of Governors of the Federal Reserve System, July 9, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17453 Filed 7–11–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Northern Trust Corporation, Chicago, Illinois; to engage *de novo* in acting as commodity pool operator and acting as commodity trading advisor, *see Dresdner Bank AG, 84 Fed. Res. Bull. 361 (1998); The Bessemer Group, Inc., 82 Fed. Res. Bull. 569 (1996)*, and serving as investment advisor, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–17414 Filed 7–11–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its regulations (''regulations'') under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (''Smokeless Tobacco Act'' of the ''Act''). The FTC is seeking public comments on its proposal to extend through August 31, 2004 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on August 31, 2001.

DATES: Comments must be filed by August 13, 2001.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Smokeless Tobacco Regulations: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rosemary Rosso, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2174.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On May 4, 2001, the FTC sought comment on the information collection requirements associated with the instant regulations, 16 CFR Part 307 (Control Number: 3084–0082). See 66 FR 22561. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Smokeless Tobacco Act regulations.[1]

[1] The Commission seeks comment on the costs and burdens imposed by the existing smokeless tobacco regulations. In March 2000, the Commission commenced a regulatory review of its smokeless tobacco regulations to determine whether there is a continuing need for the regulations and, if so, what revisions, if any, should be made. 65 FR 11944 (Mar. 7, 2000). In addition to comments sought on the costs and benefits of the existing regulations, the Commission requested comment on whether the regulations are effective in meeting the Smokeless Tobacco Act's format and display requirements and whether the current ''safe harbor'' approach is sufficiently enforceable. If the Commission determines that the regulations should be amended, it will commence a rulemaking proceeding. Should resulting amendments materially affect PRA burden, the Commission will notify OMB and seek amended clearance.

Description of the collection of information and proposed use: The Smokeless Tobacco Act requires that manufacturers, packagers, and importers of smokeless tobacco products include one of three specified health warnings on packages and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying the method to rotate, display, and distribute the warning statement required to appear in advertising and labeling. The Commission is required by the Act to determine that these plans provide for rotation, display, and distribution of warnings in compliance with the Act and implementing regulations. With one exception, all of the affected companies have previously filed plans. However, the plan submission requirement continues to apply to a company that amends its plan, or to a new company that enters the market.

Burden Statement

Estimated annual hours burden: 1,000 hours (rounded). The FTC is retaining its existing burden estimate of 1,000 hours. This amount is based on the burden previously estimated for fourteen smokeless tobacco companies to prepare and submit amended compliance plans, and to permit at least three new companies to submit initial compliance plans. Though staff's calculations underlying the estimate totaled 560 hours, staff then conservatively rounded up its estimate to 1,000 hours. Staff firmly believes that this prior rounded estimate will fully incorporate any incremental effects of an additional three companies submitting plans.

Virtually all affected companies filed their plans long ago with the Commission. Additional annual reporting burdens would occur only if those companies opt to change the way they display the warnings required by the Smokeless Tobacco Act. Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each company will file one amendment per year. This estimate is conservative because, over the past three years, the Commission has reviewed only two minor amendments to plans and the Commission has not changed the relevant regulations.[2] The estimated time to prepare the two amended plans was less than 20 hours each. The only major amendment of an approved plan, occurring more than three years ago, required only 40 hours to prepare, which is considerably less time than individual companies spent preparing their initial plans. Commission staff believes it reasonable to assume that each company would consume no more than 40 hours to prepare an amended plan.

Commission staff is currently reviewing an initial plan from a smokeless tobacco manufacturer, for an estimated additional burden of approximately 150 hours.[3] When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours apiece) to complete the initial required plans. Staff assumed that other, non-member companies would require more time, on average, to complete their plans. Staff conservatively estimated that this latter group of companies would each require approximately 150 hours, and it believes this estimate remains reasonable.

In addition to the estimates above, the Commission anticipates that in the next three years, up to two small importers, not currently participating in the domestic market, may submit initial plans, for an additional burden of approximately 80 hours. Over the past three years, two small importers submitted initial plans. Because these plans involved only a limited number of brands and no advertising, the estimated time to prepare the plans was very modest. Staff estimates that the companies spent no more than 40 hours each to prepare the plans.

Based on these assumptions, the total annual hours burden should not exceed 1,000 hours. [(14 companies amending their plans × 40 hrs. each) + (one manufacturing company submitting initial plan × 150 hours) + (2 importers submitting initial plans × 40 hrs. each) = 790 total hours, conservatively rounded up to one thousand hours.]

Estimated annual labor cost burden: $103,000

The total annualized labor cost to these companies should not exceed $103,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to rewrite or amend the plans, at an hourly rate of $125, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. [Management and attorneys' time (1,000 hrs. × 0.80 × $125 = $100,000) + clerical time (1,000 hrs. × 0.2 × $15 = $3,000).]

Estimated annual non-labor cost burden: $0 or minimal.

The Commission knows of no recordkeeping cost burden associated with the plans for the display of the warnings. The companies may keep copies of their plans to ensure the labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, e.g., file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a ''collection of information'' as it is defined in the regulations implementing the PRA, nor the extension, do the financial resources expended in relation to it constitute paperwork ''burden.'' *See* 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. As noted above, virtually all affected firms have already submitted approved plans. For these companies, there are no capital expenditures. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies must make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials.

Finally, capital expenditures for small importers are likely to be de minimis. Both firms that submitted plans over the past three years used stickers to place the warnings on their packages. The stickered warnings could be generated with office equipment and supplies such as computers and labels, all of

[2] See note 1.

[3] This company has been selling smokeless tobacco products for several years, but failed to submit a plan as required by the Act and the regulations. The company is in the process of obtaining approval of a complying rotational plan. Thus, most, if not all, of the 150 estimated burden hours likely will have been expended before August 31, 2001. However, erring on the conservative side, staff has included these hours in its burden estimate.

which the companies should have on hand in the ordinary course of their business. Because neither firm engaged in any advertising, no costs associated with advertising were incurred.

William E. Kovacic,

General Counsel.

[FR Doc. 01–17436 Filed 7–11–01; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and date: 9 a.m.–6 p.m., July 31, 2001.

Place: Children's Defense Fund Lodge, 1000 Alex Haley Lane, Clinton, TN 37716. Telephone: (865) 457–6466.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A Memorandum of Understanding (MOU), signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be discussed: The agenda includes a discussion of consensus building techniques for committee members.

Agenda items are subject to change as priorities dictate.

Contact person for more information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 6, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–17430 Filed 7–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01144]

CDC Support To Improve Uptake of Prevention of Mother to Child Transmission of HIV (PMTCT) Programme in Botswana; Notice of Availability of Program Support

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2001 funds for a grant program for the PMTCT Programme, Ministry of Health and Ministry of Local Government, Botswana. This program addresses the ''Healthy People 2010'' focus areas of Access to Quality Health Services, Health Communications, Maternal, Infant, and Child Health and Sexually Transmitted Diseases.

The project is a nationwide prevention program targeting pregnant females to identify HIV positive pregnant women so they may receive antiretroviral prophylactic treatment to prevent the transmission of HIV to their newborn children.

The Government of Botswana will take receipt of the equipment and list as its property to be maintained by them as any other equipment.

B. Eligible Applicants

Assistance will be provided only to the Government of Botswana, Ministry of Health. No other applications are solicited.

This is a sole source grant to provide assistance to the Government of Botswana in the form of equipment to enhance the ability of the program to provide confidential pre- and post-test HIV counseling, and identify HIV positive women eligible for antiretroviral prophylactic treatment so that HIV is not transmitted to the new born child.

The MOH is the only appropriate and qualified organization to fulfill the requirements set forth in this announcement because:

1. The Ministry of Health is uniquely positioned in terms of constitutional authority, mandate, and ability to oversee and safeguard public health. Additionally, it provides over 95% of health care services in Botswana and is the only health care agency to provide AZT, which is a crucial component of the PMTCT program. No other health care agency in Botswana is able to provide free health care services to the general public. The MOH has the unique ability to extend services to all parts of the country.

2.The MOH has in place the central, district, and community based support structure such as clinics and staff to immediately engage in the activities listed in this announcement.

3. The MOH is directly responsible for the implementation, monitoring, and evaluation of population-based HIV/AIDS prevention and care policies and services.

C. Availability of Program Support

It is expected that the support 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 2 years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports.

Use of Support

Support is limited to the transfer of equipment to support the specified program activities.

Recipient Participation

The Ministry of Health of Botswana will provide the land, staff, medicines, utilities, and other supplies necessary to carry out the program to prevent mother-to-child transmission of HIV.

D. Program Requirements

In conducting activities to achieve the purpose and meet the objectives of this program, the recipient will be responsible for the following activities:

1. Selecting the sites for equipment installation.
2. Accepting, installing, and maintaining all property and equipment.
3. Integrating the equipment and group videotape into clinics to be used for the intended purpose.
4. Assuming all liability issues and maintaining all appropriate insurance, e.g. accident or property. Indemnify and hold harmless all US Government interest for any personal or property issue. If necessary, providing appropriate storage and coverage for any other incidental costs.

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. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

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 9, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

G. Evaluation Criteria

Your application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Program Plan (25 Points)

The extent to which the applicant specifies the number of videotapes, videotape players, televisions, cabinets, portable buildings and other related equipment needed to show the videotapes which were designed for group pre-test counselling in the approximately 260 clinics and hospitals which provide antenatal clinic (ANC) services.

2. Program Objectives (25 Points)

The extent to which the program objectives are measurable, realistic, specific, and timephased.

3. Methods (25 Points)

The extent to which the applicant describes the methods for accomplishing the proposed objectives and identifies where activities or services will take place. This includes a description of how the applicant will receive and organize the equipment, how the equipment will be used in program activities, and how the applicant will coordinate the installation, maintenance and oversee the proper use and operation of the equipment.

4. Evaluation Plan (25 Points)

The extent to which the applicant describes how the use of the portable buildings by the PMTCT program and/or the clinics will be monitored; and describes methods to assess evidence of use and increases in program participation or up-take attributed to the success of this activity.

The extent to which the applicant describes evaluation activities to assess the impact of the PMTCT videotape and Group HIV Pretest Counselling activities; the ability of the videotape to be successfully integrated into the ANC setting, improve acceptance of counselling, testing, and short-course AZT among eligible pregnant women, and improve health care worker support and implementation of the PMTCT program in Botswana.

5. Equipment List (Not Scored)

The extent to which the applicant itemizes the type and amount of equipment requested.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of quarterly progress reports regarding the acceptance and installation of the equipment.

An annual depreciation report must be submitted to CDC, until the point where the equipment's book value reaches $5,000. All reports shall be stated in U.S. dollars.

There will be a written agreement to execute the transfer of the equipment.

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.

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, 42 U.S.C. section 242I, as amended. The Catalog of Federal Domestic Assistance number is 93.941.

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.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 MS–15, Atlanta, GA 30341–4146, Telephone number: 770–488–2782, email address: dpr7@cdc.gov.

For program technical assistance, contact: Ethleen S. Lloyd, c/o U.S. Embassy Gaborone, 2170 Gaborone Place, Washington, DC 20521, Phone: +267–301–696, Fax: +267–373–117, E-mail: esl1@cdc.gov.

Dated: July 2, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–17040 Filed 7–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–07]

Family Violence Prevention and Services Program, National Resource Center on Domestic Violence and Four Special Issue Resource Centers; Availability of Funds for Fiscal Year 2001 and Request for Applications

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the announcement of Family Violence Prevention and Services program, National Resource Center on Domestic Violence and Four Special Issue Resource Centers; Availability of funds for Fiscal Year 2001 and Request for Applications published on June 12, 2001 (66 FR 31657).

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW, Washington DC 20447. Telephone William Riley, (202) 401–5529, James Gray, (202) 401–5705, Sunni Knight (202) 401–5319 or Shena Russell, (202) 205–5932.

Correction

In the **Federal Register** issued June 12, 2001 (66 FR 34657), make the following correction. On page 31661 in the first column, remove the paragraph under Budget Period and Federal Share, and replace with:

''The total FY 2001 Federal share for the four cooperative agreements in support of four Special Issue Resource Centers (SIRCs) is $4,351,075 for the first 12-month budget period, subject to the availability of funds.''

(Catalog of Federal Domestic Assistance number 93.592, Family Violence Prevention and Services)

Dated: July 7, 2001.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 01–17441 Filed 7–11–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2001–08]

Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the announcement of Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications published on July 2, 2001 (66 FR 34996).

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343.

Correction

In our notice issued July 2, 2001 (66 FR 34996), make the following correction. On page 34998 in the first column, the first full paragraph, in the fifth line after the word, ''follows'', remove the four priority and subpriority areas and all the language therein, and add;

Priority Area 1.0: Training and Technical Assistance for ROMA Implementation

Sub-Priority Areas

1.1 National Academy (NA)
1.2 Leadership Development (LD)
1.3 Train-the-Trainers (TT)
1.4 Best Practices (BP)
1.5 Impact Information (IF)
1.6 Special ROMA Technical Assistance (RM)

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

2.1 National Training (CB)
2.2 Collection, Analysis and Dissemination of Information On the CSBG Activities (IS)
2.3 Local Capacity Building (CP)
2.4 Strengthening CAA Capacity to Address Legal Issues (LF)
2.5 Addressing Urban Needs (UI)
2.6 State CAA Association Capacity Building (EQ)

Priority Area 3.0: Strengthening At-Risk Agencies

Sub-Priority Areas

3.1 Special State Technical Assistance
3.2 National Peer-to-Peer Assistance

Priority Area 4.0: Information Sharing

Sub-Priority Area

4.1 Information Sharing Tools

Dated: July 7, 2001.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 01–17440 Filed 7–11–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Advisory Bulletin on Practices of Business Consultants

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth a recently issued OIG Special Advisory Bulletin addressing certain questionable marketing and other practices by independent business consultants. These practices may put the Medicare and Medicaid programs at increased risk of fraud and abuse. The purpose in issuing this bulletin is to alert providers, suppliers and others to those practices.

FOR FURTHER INFORMATION CONTACT: Vicki Robinson, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION: In an effort to identify and eliminate fraud, waste and abuse, the Office of Inspector General (OIG) periodically develops and issues Special Advisory Bulletins to alert health care providers about industry practices and arrangements that potentially pose a risk to the Federal health care programs. The purpose of this Special Advisory Bulletin is to identify certain questionable practices that are engaged in by a small number of consultants and to emphasize the need for health care providers to exercise good business judgment when selecting and relying on a consultant. A reprint of the recently issued Special Advisory Bulletin follows.

Special Advisory Bulletin on Practices of Business Consultants (June 2001)

Introduction

The Office of Inspector General (OIG) was established at the Department of Health and Human Services (HHS) by Congress in 1976 to identify and eliminate fraud, abuse, and waste in the Department's programs, including the Medicare and Medicaid programs, and to promote efficiency, economy, and effectiveness in departmental operations. Historically, the OIG has

primarily carried out this mission through a nationwide program of audits, investigations, and inspections. More recently, the OIG has augmented its efforts to detect fraud, abuse, and waste with increased efforts to promote prevention through the issuance of guidance to the health care industry.

Providers, suppliers, and others [1] involved in the health care industry not only serve the health care needs of Federal program beneficiaries, but they also play an essential role in safeguarding the integrity of the Federal programs. As part of our commitment to working with industry, we want to alert providers to certain marketing and other practices used by some independent consultants that should concern providers and that may put the Medicare and Medicaid programs at increased risk of abuse. While some of the practices described in this bulletin may not themselves rise to the level of fraud and may not be illegal in all cases, all of the practices increase the risk of abuse of the Medicare and Medicaid programs. We encourage providers to recognize and protect themselves and the Federal programs against these questionable practices. Providers use the legitimate services of consultants, such as accountants, attorneys, business advisors, and reimbursement specialists, for many *bona fide* reasons, including, for example, improving the efficiency and effectiveness of the provider's operations (including its coding and billing systems), enhancing the accuracy of the provider's claims, conserving resources through outsourcing, and ensuring compliance with applicable laws, regulations, and rules. Responsible consultants play an integral role in developing and maintaining practices that enhance a client's business objectives, as well as improving the overall integrity of the health care system.

We believe that most consultants, like most providers, are honest and that the vast majority of relationships between providers and consultants are legitimate business activities. Unfortunately, a small minority of unscrupulous consultants engage in improper practices or encourage abuse of the Medicare and Medicaid programs. Depending on the circumstances, these practices may expose both the consultants and their clients to potential legal liability.[2] Hiring a consultant does not relieve a provider of responsibility for ensuring the integrity of its dealings with the Federal health care programs.

Questionable Practices

To safeguard themselves, providers engaging the services of consultants should be alert to the following questionable practices:

Illegal or Misleading Representations. Consultants may make illegal or misleading statements or representations about their relationship with the Medicare program, the Centers for Medicare and Medicaid Services (CMS),[3] or the OIG. For example, consultants may misrepresent that they have ''inside'' or ''special'' access to the OIG or to OIG materials. In other cases, consultants may misrepresent that their services or products are approved, certified, or recommended by Medicare, CMS, HHS, or the OIG. Such claims are misleading and potentially harmful to well-meaning providers. Illegal or misleading statements or representations include, for example:

- An educational consultant misrepresenting that its Medicare reimbursement seminars are mandatory for obtaining or maintaining a Medicare provider number. Although such training may be valuable, the Medicare program does not require a provider to attend training courses in order to participate in the Medicare program.
- A consultant misrepresenting that a provider that fails to attend its ''Medicare-sanctioned'' seminars will be subject to Government penalties. In truth, the Government does not penalize providers for such conduct.
- A consultant improperly using Federal program logos or symbols on its marketing materials.[4]
- A consultant claiming that it is recommended by the OIG. The OIG does not recommend or endorse particular consultants or particular consultants' services.
- A compliance consultant falsely asserting or implying that it offers recognized accreditation or certification for compliance programs or compliance officers.

Promises and Guarantees. Consultants may explicitly or implicitly promise or guarantee specific results that are unreasonable or improbable. In some cases, consultants may resort to improper means to effectuate these promises or guarantees, such as submitting false claims or preparing false cost reports on behalf of a client. This misconduct potentially subjects both the consultant and the provider to liability under the False Claims Act.[5] Problematic promises would include, for example:

- A valuation consultant promising or assuring a client that its appraisal of a physician's practice will yield a ''fair market value'' that satisfies the client's need for a particular valuation, regardless of the actual value of the practice.
- A billing consultant promising a prospective client that its advice or services will produce a specific dollar or percentage increase in the client's Medicare reimbursements. The consultant's fee is often based on a percentage of this increased reimbursement.

Encouraging Abusive Practices. Some consultants may knowingly encourage abuse of the Medicare or Medicaid programs. In some cases, reimbursement specialists or other consultants advocate that their clients engage in aggressive billing schemes or unreasonable practices that are fraudulent or abusive of the Medicare or Medicaid programs. This conduct potentially subjects both the consultant and the client to liability under the False Claims Act. For example:

- A reimbursement specialist may suggest that a client use inappropriate billing codes in order to elevate reimbursement and may describe methods to avoid detection.
- A consultant may encourage a client to modify or customize a routine medical supply in an insignificant manner to justify billing the supply as a device that generates higher reimbursement.
- A reimbursement specialist may advise a client to bill for an expensive item or service with a high reimbursement rate when a less expensive item or service with a lower reimbursement rate was actually provided to the patient.
- A consultant may advise a client to adopt a patently unreasonable interpretation of a reimbursement law, regulation, or rule to justify substantially greater reimbursement.
- A consultant may promise to increase Medicare revenues for laboratory services by showing its clients how to disguise double billings and claims for medically unnecessary services.
- A consultant may suggest the creation of deceptive documentation in order to mislead potential reviewers.

Discouraging Compliance Efforts. Some consultants may make absolute or blanket statements that a client should not undertake certain compliance efforts (such as retrospective billing reviews) or cooperate with payor audits, regardless of the client's circumstances. As reflected in the OIG's compliance guidances,[6] the OIG believes that voluntary compliance efforts, such as internal auditing and self-review, are important tools for doing business with the Federal health care programs. Left undetected and, therefore, unchecked and

[1] For purposes of simplicity, the term ''providers'' as used in this bulletin refers to providers, suppliers, and practitioners that provide items or services payable in whole or in part by a Federal health care program.

[2] The practices described in this bulletin are illustrative, and this bulletin does not purport to identify every potentially improper practice arising from the relationship between a provider and a consultant, nor does it purport to identify every potential violation of the criminal or civil statutes. In particular, this bulletin is not intended to identify every potential violation of the False Claim Act or the anti-kickback statute, although some of the practices described may contribute to, or increase the risk of, violations of these provisions. This bulletin does not address the many fraud and abuse concerns that arise from sham consulting arrangements.

[3] The Health Care Financing Administration (HCFA) renamed the Centers for Medicare and Medicaid Services; misuse of the new or former name would be equally deceptive.

[4] Section 1140 of the Social Security Act prohibits the improper use of the words ''Medicare'', ''Medicaid'', ''Health Care Financing Administrator'', ''HCFA'', ''Department of Health and Human Services'', ''DHHS'', ''Health and Human Services'', ''HHS'', ''Social Security'', ''Social Security Account'', ''Social Security System'', ''Social Security Administration'', ''Supplemental Security Income Program'', ''SSI'', and ''SSA'', and any variation on these words, as well as the symbols or emblems for the SSA, HCFA and HHS. Violations are punishable by civil money penalties of $5,000 per violation (in the case of mail solicitation or advertisement, each piece of mail constitutes a separate violation) or $25,000 in the case of a broadcast or telecast. The OIG enforces this authority.

[5] The False Claims Act ascribes liability only where the party knows or acts with reckless disregard or deliberate ignorance of the falsity of the claim.

[6] The OIG's compliance guidances are available on our webpage at http://www.hhs.gov/oig.

uncorrected, improper billing or other conduct may exacerbate fraud and abuse problems for a provider in the future.

Conclusion

Consultants who abuse their position of trust pose a risk to their provider clients, to the Federal health care programs, and to themselves. While most consultants are honest and provide valuable services to their clients, a small minority engage in questionable practices or promote abuse of the Federal health care programs. In general, if a consultant's advice seems too good to be true, it probably is. We urge providers to be vigilant and to exercise judgment when selecting and relying on consultants.

Dated: July 3, 2001.

Michael F. Mangano,

Acting Inspector General.

[FR Doc. 01–17484 Filed 7–11–01; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–46]

Notice of Submission of Proposed Information Collection to OMB Outline Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0012) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Outline Specifications.

OMB Approval Number: 2577–0012.

Form Numbers: HUD–5087.

Description of the Need for the Information and Its Proposed Use: Information is prepared by the architect employed by the Public Housing Agency (PHA) or Turnkey Developers to establish types and qualities of materials and equipment to be incorporated into public housing developments. The PHA and HUD use this information to determine that suitable equipment and materials specified comply with the code and standards and are appropriate in the development. Applicable authority is Section 6(A) of the U.S. Housing Act of 1937.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion and monthly.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	240		2.98		3.70		2,652

Total Estimated Burden Hours: 2,652.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17422 Filed 7–11–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–47]

Notice of Submission of Proposed Information Collection to OMB Analysis of Proposed Main Construction Contract

AGENCY: Office of the Chief Information Officer, HID.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding the proposal. Comments should refer to the proposal by name/or OMB approval number (2577–0037) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov;

telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained fron Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) to OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Analysis of Proposed Main Construction Contract.

OMB Approval Number: 2577–0037.

Form Numbers: HUD–52396.

Description of the Need for the Information and Its Proposed Use: Housing Agencies must prepare and submit main construction contracts for projects proposed or being developed under the Low-income Housing Program. HUD form 52396 indicates the approved pre-bid budget amounts for various elements in a construction project, the actual bid for these same elements, any proposed changes in these amounts and the actual final adjusted for each category. It is a comparison of actual bid costs on a conventionally developed public housing project to the approved pre-bid estimate. Information is submitted to HUD to gain approval for award of a construction contract.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Recordkeeping and reporting.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	96		1.14		2.25		248

Total Estimated Burden Hours: 248.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 29, 2001

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17423 Filed 7–11–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–48]

Notice of Submission of Proposed Information Collection to OMB 24 CFR Parts 55, Floodplain Management

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0151) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: 24 CFR Parts 55, Floodplain Management.

OMB Approval Number: 2506–0151.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: 24 CFR 55 implements decisionmaking procedures prescribed by E.O. 11988 with which applicants must comply before HUD financial assistance can be approved for projects that are located within floodplains. Records of compliance must be kept.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local, or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden:	300		1		9		2,700

Total Estimated Burden Hours: 2,700.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 5, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–17424 Filed 7–11–01; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Customer Satisfaction Survey; Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection.

SUMMARY: The Bureau of Indian Affairs of the Department of the Interior is preparing a customer satisfaction survey to determine the quality of its services and its program delivery. Our intent is to improve our services and program delivery based upon the results of these surveys. The Bureau of Indian Affairs is requesting comments about this customer satisfaction survey project.

DATES: The deadline for comments to be received is September 10, 2001.

ADDRESSES: Commenters may submit comments to the Bureau of Indian Affairs via electronic mail (email), telefax or postal mail for the duration of the comment period. Comments by email must refer to ''Customer Satisfaction Survey comments'' and be sent to this email address: *jeanninebrooks@bia.gov.* Comments by fax must refer to ''Customer Satisfaction Survey comments'' and faxed to (202) 208–6635. The postal mail address is Bureau of Indian Affairs, Office of Planning, Budget and Management Support, 1849 C Street, NW, MS 4612–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeannine Brooks, Supervisory Budget Analyst, Bureau of Indian Affairs, Office of Planning, Budget and Management Support, Branch of Strategic Planning, 1849 C Street, NW, MS 4612–MIB, Washington, DC 20240, (202) 219–1650; email: *jeanninebrooks@bia.gov*

SUPPLEMENTARY INFORMATION:

I. Background

The needs of the public in Indian Country are substantial. American Indians are younger and have higher levels of poverty, unemployment, single parent families, fertility and mortality than the U.S. population at large. Tribal self-determination relies on strong tribal self-governance and self-sufficiency.

The Bureau of Indian Affairs' mission statement is to fulfill its trust responsibilities and promote self-determination on behalf of tribal governments, American Indians and Alaska Natives. More specifically, the self-determination mission goal is to provide tribes with the resources they need to foster strong and stable tribal governments and exercise their authority as sovereign nations. The Community Development mission goal states that the Bureau of Indian Affairs will assist in strengthening tribal communities through the development of self-sustaining economies and improved human and physical infrastructure. To fulfill the mission statement and meet each of the Bureau of Indian Affairs' mission goals, the Bureau of Indian Affairs must deliver quality services and coordinate its work through government-to-government relationships with State, local and tribal governments. To evaluate the success of its efforts in meeting its goals and the needs of Indian Country, the Bureau of Indian Affairs is proposing to administer a series of customer satisfaction surveys. Within its major program areas, there are potentially several different types of customers. For example, the customers of the Bureau of Indian Affairs' Office of Tribal Services range from individual Indians and contractors to State and tribal governments.

Federal agencies are required by Federal Law and Executive Order to take certain steps to assure performance of Federal management objectives. The Government Performance and Results Act of 1993 (GPRA) requires agencies to take steps to measure their effectiveness in meeting their mission. In addition, Executive Order 12862 mandates that agencies take steps to survey customers to determine their desired services and their satisfaction with existing services. Customers will be provided 60 days to respond to the survey.

II. Discussion

A. Administrative Requirements

These information collections enable the Bureau of Indian Affairs to help the Department of the Interior meet the requirements of Executive Order 12862, Setting Customer Service Standards, which requires agencies to annually ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.''

The Bureau of Indian Affairs customer satisfaction project will be administered by the Office of Planning, Budget and Management Support. All information provided through the surveys will be held in confidence and used only by the Office of Planning, Budget and Management Support for analysis. No identifying information will be shared with other offices within the Bureau of Indian Affairs. However, the Office of Planning, Budget and Management Support will share the results in report form with the Bureau of Indian Affairs management and its program areas without identifying specific sources.

The Office of Planning, Budget and Management Support will manage all aspects of the survey including dissemination, data analysis and results reporting. Approximately 6,500 surveys will be mailed to the customers. It is anticipated that between 2,500 to 3,000 respondents would be needed to make meaningful statements or analysis about customer satisfaction.

Any comments received during the public comment period will be considered in the development of the final survey instrument. Federal regulations require that agencies utilize such steps when developing any information collection from the public; regulations also require that such information collection be approved by the Office of Management and Budget (OMB) prior to collection. The Branch will present an information collection request to OMB which summarizes all steps taken related to the proposed surveys. As noted previously, the Bureau of Indian Affairs had several major program areas which provide public services. These range from trust responsibilities through law enforcement and human services. The Branch proposes to survey customers of all of the Bureau of Indian Affairs' service programs. The initial mission area to be examined will be the Office

of Tribal Services. The Office of Tribal Services is a broad collection of programs and functions ranging from social services and housing to tribal courts.

B. Survey Content

This section reproduces the major questions of the proposed surveys. Comments are invited on the questions' content and verbiage. The reader should note that the Bureau of Indian Affairs plans to do a mail survey; because of formatting limitations with the **Federal Register**, the Bureau of Indian Affairs has not reproduced the visual format of the questions. The actual surveys will be more user friendly.

Office of Tribal Services Survey

The following questions will be repeated in the actual survey for the various segments of the Office of Tribal Services. For illustrative purposes in this **Federal Register** notice, the questions are reproduced for only one of the Tribal Service's functional areas.

1. In the past 12 months, I have contacted the Office of Tribal Services regarding:

Judicial Services; Self Determination; Contract Support issues; Tribal Enrollment; Tribal Relations; Tribal Federal Acknowledgment; Housing; Social Services: (for each, check one) Daily, Weekly, Monthly, Quarterly, Annually, None.

2. My primary contact with the Housing staff has been at the: (check one) Washington, DC Office; Regional Office; Agency/Field Station.

3. The staff I deal with most often is: (check one) Secretaries, Clerks, Office Assistants; Professional/Technical Staff; Managers, Office Supervisors; Don't Know.

4. The Housing staff is: Readily available; helpful; knowledgeable about their jobs; courteous/respectful (for each, check one) always, often, sometimes, rarely, never, don't know.

5. As far as the people handling the Branch of Housing are concerned, would you say that you have a great deal of confidence, only some confidence or hardly any confidence at all in them? (Check one) a great deal of confidence; only some confidence; hardly any confidence; don't know; not applicable.

6. The Branch of Housing: Is easy to contact; responds or takes action in a timely manner; provides accurate information; understands my needs; values me as a customer (for each, check one) always, often, sometimes, rarely, never, don't know.

7. For the past 12 months, I would rate the performance of the Branch of Housing in: listening to my comments or concerns; considering my comments or concerns; responding to information requests (check one for each) excellent, good, average, fair, poor, not applicable.

8. If the Branch of Housing's staff can make one improvement in its interaction with you, what should it be? (open-ended question)

9. One thing the Branch of Housing can do new or differently to aid its customers is to: (open-ended question).

10. Please share any additional comments you may have regarding the Branch of Housing. (open-ended question)

Questions 2 through 10 repeat for the following areas: Division of Self-Determination Services, Division of Acknowledgment and Research, Branch of Social Services, Branch of Judicial Services and Division of Tribal Government Services.

III. Request for Comments

This notice covers the main points of the proposed survey. During the comment period, anyone may submit comments or suggestions related to any aspect of the proposed information collection.

A. Areas for Comment

This notice covers the main points of the proposed survey. During the comment period, anyone may submit comments or suggestions related to any aspect of the proposed information collection. The results of the survey will be used by the Bureau of Indian Affairs to improve delivery of its services to its customers. This action and this notice follows the requirements of the Government Performance and Results Act of 1993 (GPRA), Executive Order 12862, and the Paperwork Reduction Act of 1995. The Bureau will consider the comments received, make any warranted changes to its survey, and submit the information collection package to the Office of Management and Budget for approval. No survey will be conducted until we have received approval from the Office of Information and Regulatory Affairs, Office of Management and Budget. The surveys will display the OMB Control number and expiration date.

The Bureau of Indian Affairs invites your comments on the information collection concerning:

(a) Is the information necessary for the proper performance of the Bureau's functions?

(b) Is the request duplicated elsewhere?

(c) Is the request burdensome, hard to understand?

(d) Does it inform the respondent of the reason for collection, give a realistic time to complete the survey, inform the respondent whether the response is voluntary, mandatory, or required for a benefit, whether a copy must be retained and the length of time?

(e) Can the survey use any other information technology to lessen the respondent's burden?

B. Flexibility

The Bureau of Indian Affairs is considering ways to increase flexibility, including considering the possibility of allowing electronic returns. We estimate that 95 percent of surveys will be distributed by the Bureau of Indian Affairs and returned to it via postal mail. A small percent (5 percent) is expected to be returned via telefax. Of those sent and/or returned electronically, we expect those respondents to be organizational entities such as tribal governments or State governments.

C. Burden

Type of Action: New collection.

Title: Customer Satisfaction Survey.

Target Public: Tribes, Individual Indians and Alaska Natives, Individuals and Groups petitioning for Federal recognition, State and local offices.

Description of Collection: Survey of customer satisfaction with levels of services provided.

Number of Respondents: The Office of Planning, Budget and Management Support estimates that approximately 2,500 to 3,000 responses will be needed to complete an analysis for a major Bureau of Indian Affairs program area.

We estimate that completion of a survey will take 24 minutes per respondent; this figure includes time to read the introductory postcard, time to read and complete the survey, and time to mail the survey. As planned, we will provide a self-addressed stamped envelope for the survey to be returned; we believe that will aid in the response rate and minimize the burden on respondents.

Annual Burden: 2500 respondents × 24 minutes = 1000 hours with negligible costs.

Dated: June 1, 2001.

James H. McDivitt

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–16804 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to a Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Amendment between the Rosebud Sioux Tribe and the State of South Dakota, which was executed on May 14, 2001.

DATES: This action is effective July 12, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 29, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–17490 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–66363]

Public Land Order No. 7491; Withdrawal of Public Lands and Minerals in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 167,137.69 acres of public lands from surface entry and mining, but not from sales, exchanges, or recreation and public purposes for a 20-year period. This order would also withdraw 15,813.12 acres of reserved Federal mineral interest from mining. The purpose of the withdrawal is for the protection of open space values of public lands. The lands have been and will remain open to mineral leasing and mineral material sales.

EFFECTIVE DATE: July 5, 2001.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

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. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from sales and exchanges under Sections 203 and 206 of the Federal Land Policy and Management Act, as amended, conveyances under the Recreation and Public Purposes Act, as amended, mineral material sales under the Materials Act of 1947, or mineral leasing under the Mineral Leasing Act of 1920, for the protection of public lands in Washoe County:

Mount Diablo Meridian

T. 20 N., R. 18 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½ (that portion north of the south boundary of R/W Nev-042776 for U.S. Highway 395).
T. 21 N., R. 18 E.,
Sec. 4, lots 1 to 4, inclusive, S½NW¼, and SW¼;
Sec. 6, lots 11 to 14, inclusive;
Sec. 7, lots 9 to 12, inclusive; secs. 8 and 10;
Sec. 12, N½, NW¼SW¼, S½SW¼, and SW¼SE¼;
Sec. 14;
Sec. 18, lots 9 to 12, inclusive;
Sec. 22;
Sec. 26, lots 1 and 2, W½NW¼NE¼, NW¼, N½SW¼, and W½SE¼;
Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼;
Sec. 34, NE¼, E½NW¼, E½W½NW¼, SW¼SW¼NW¼, N½N½SW¼, and N½SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).
T. 22 N., R. 18 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 5 to 20, inclusive;
Sec. 5, lots 5 to 8, inclusive, S½N½, and S½;
Sec. 6, lots 3 to 6, inclusive;
Sec. 8, lots 1 to 12, inclusive, and SW¼;
Sec. 9 to 11, inclusive;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14, lots 1 to 8, inclusive, and W½;
Secs. 15, 16, and 17;
Sec. 18, lots 1 to 4, inclusive;
Sec. 20, lots 1 to 8, inclusive, and S½;
Sec. 21;
Sec. 22, lots 1 to 4, inclusive, NE¼, and S½;
Sec. 23;
Sec. 24, lots 1 to 4, inclusive, and SW¼;
Sec. 25, W½;
Secs. 26 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive;
Sec. 31, lots 3 to 7, inclusive;
Sec. 32, lots 1 to 6, inclusive, E½, E½NW¼, NE¼SW¼, and S½SW¼;
Sec. 33;
Sec. 34, lots 1 to 8, inclusive, and N½;
Sec. 35;
Sec. 36, lots 1 to 8, inclusive.
T. 23 N., R. 18 E.,
Sec. 7, lots 2, 3, and 4;
Sec. 8, lots 2 to 7, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 9, lots 1 to 4, inclusive;
Sec. 12, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 13, lots 1 to 10, inclusive, E½NW¼, and SW¼SW¼;
Sec. 16, lots 1 to 10, inclusive, and E½SE¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive;
Sec. 20;
Sec. 21, lots 1 to 10, inclusive, and NE¼NE¼;
Sec. 22, SE¼SW¼ and SE¼;
Sec. 24, lots 1 to 6, inclusive, W½NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 25;
Sec. 26, lots 1 to 4, and SE¼NE¼;
Sec. 27, NE¼, E½NW¼, and S½;
Sec. 28, lots 1 to 12, inclusive, W½NE¼, and SE¼NE¼;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive;
Sec. 31, lots 1 to 4, inclusive;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 12, inclusive, and SE¼;
Sec. 34, lots 1 to 7, N½, and SW¼SE¼;
Sec. 35, lots 1 to 6, inclusive, and NE¼;
Sec. 36, lots 1 to 8, inclusive, and N½.
T. 17 N., R. 19 E.,
Sec. 12, lots 1 and 2, NE¼, E½NW¼, S½SW¼, and N½SE¼.
T. 20 N., R. 19 E.,
Sec. 1, W½ lot 1 in NE¼, lot 2 in NE¼, lots 1 and 2 in NW¼;
Sec. 2, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
Sec. 4, S½SW¼;
Sec. 10, NW¼NE¼ and N½NW¼;
Sec. 12.
T. 21 N., R. 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 8, N½NE¼, SE¼NE¼, and E½SE¼;
Sec. 10;
Sec. 11, SW¼NE¼, W½NW¼, NE¼SW¼, and W½SE¼;
Secs. 12 and 13;
Sec. 14, N½;
Sec. 16, N½ and SE¼;
Sec. 22, SW¼;
Sec. 24, SE¼NW¼ and SW¼;
Sec. 25;
Sec. 26, E½NE¼ and NE¼SE¼;
Sec. 28, NE¼, N½SE¼, and SE¼SE¼;
Sec. 36.
T. 22 N., R. 19 E.,

Sec. 1, lots 3 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 2, 3, and 4;
Sec. 4, lots 1 to 11, inclusive, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 9, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 10 and 12;
Sec. 14, SE¼SW¼;
Sec. 15, W½;
Sec. 16, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 22 and 24;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SW¼SE¼;
Sec. 36.

T. 23 N., R. 19 E.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 6 and 7, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 35, N½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

T. 16 N., R. 20 E.,
Sec. 1, lot 3, lot 2 in NE¼, lots 1 and 2 in NW¼, and SW¼NE¼;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in NW¼, N½S½, and S½SW¼;
Sec. 3, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
Sec. 4, lots 1 and 2 in NE¼, and S½;
Secs. 9 and 10;
Sec. 11, Excepting therefrom the following:
(a) That portion conveyed to Western Union Telegraph Company.
(b) That portion conveyed to the State of Nevada.
(c) That portion conveyed to KMBJ, Inc.
(d) That portion described in the deed to AT&T Communications of Nevada;
Sec. 14, irregular Washoe County portion within W½W½;
Sec. 15;
Sec. 16, SE¼SE¼;
Sec. 20, E½, E½SW¼, and SW¼SW¼;
Sec. 30, lot 1 in NW¼, S½ of lot 2 in NW¼, lots 1 and 2 in SW¼, and E½.

T. 17 N., R. 20 E.,
Sec. 1, lot 2 in NE¼, lot 2 in NW¼, and SW¼SE¼;
Sec. 2, E½ of lot 1 in NE¼, lot 2 in NE¼, W½ of lot 1 in NW¼, lot 2 in NW¼, SW¼, and W½SE¼;
Sec. 8, E½, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 9, S½;
Sec. 10, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 11;
Sec. 12, E½, S½NW¼, and SW¼;
Secs. 13 to 16, inclusive;
Sec. 17, E½, NW¼, W½SW¼, and SE¼SW¼;
Sec. 18, E½E½, E½NE¼SW¼, NE¼SE¼SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 20, lots 1 and 2, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Secs. 21 to 26, inclusive;
Sec. 28;
Sec. 29, lots 1, 2, and 3, S½N½, and S½;
Sec. 30, N½ of lot 1 in SW¼ and E½;
Sec. 32, N½N½, SE¼NE¼, SW¼NW¼, and E½SE¼;
Sec. 33;
Sec. 34, lots 1 and 2, N½, SW¼, and W½SE¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 36, lots 1 to 16, inclusive.

T. 18 N., R. 20 E.,
Sec. 4, lots 5 and 6, inclusive;
Sec. 26, SW¼SW¼;
Sec. 28, SW¼SW¼;
Sec. 33, NE¼NW¼;
Sec. 34, E½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NW¼, W½SE¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, N½N½NE¼SE¼, N½SW¼NE¼SE¼, S½SE¼NE¼SE¼, W½SW¼SW¼SE¼, W½SE¼SW¼SW¼SE¼, E½E½SE¼SW¼SE¼, NE¼NE¼SE¼SE¼, W½SE¼SE¼, and S½SE¼SE¼SE¼.

T. 19 N., R. 20 E.,
Sec. 12, SE¼SW¼ and SW¼SE¼;
Sec. 14, SE¼NE¼ and SE¼;
Sec. 32, SE¼NE¼, S½S½NE¼SE¼, and S½SE¼;
Sec. 34, W½NW¼NW¼NE¼NE¼, S½NW¼NE¼NE¼, W½SW¼NE¼NE¼, SE¼NE¼NE¼, E½NE¼NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, E½NW¼NW¼NE¼, S½NW¼NE¼, NE¼NE¼SW¼NE¼, E½NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, W½NE¼NW¼SW¼NE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, W½NE¼SW¼SW¼NE¼, W½SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, N½NW¼, NE¼SE¼NW¼, W½NW¼SE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼, and W½SW¼SE¼.

T. 20 N., R. 20 E.,
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 2, 3, and lots 8 to 11, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and lots 5 to 9, inclusive, W½NE¼, E½NW¼, NE¼SW¼, and N½SE¼SW¼;
Sec. 9, SW¼;
Sec. 14, lots 14, 18, 22, lots 43 to 50, inclusive, lots 53 to 54, inclusive, lot 58, lots 62 to 69, inclusive, lots 71 to 73, inclusive, lots 75 to 90, inclusive,W½NE¼SW¼NE¼, and W½SW¼NE¼;
Sec. 16, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 20, S½NE¼, E½SW¼, and SE¼;
Sec. 21, lots 3 and 4, and NW¼SW¼;
Sec. 28, lots 15, 16, lots 21 to 24, inclusive, lots 26, 29, and lots 31 to 41, inclusive, SW¼NE¼, SW¼NW¼, and SE¼;
Sec. 29, lots 9 to 15, inclusive, N½NE¼, SE¼NE¼, NE¼SE¼, SW¼SE¼, and all unpatented mining claims.

T. 21 N., R. 20 E.,
Sec. 2, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lot 1, SE¼NE¼, and SE¼;
Sec. 6, lots 1 to 7, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 7, lots 1 to 4, inclusive, E½NW¼, and E½SW¼;
Sec. 8, E½;
Sec. 10, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 15, lots 3, 4, and 5, W½NE¼, E½SE¼NW¼, and NE¼SW¼;
Sec. 17, NE¼ and S½;
Sec. 18, lots 1 to 4, inclusive, E½W½, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 2 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Secs. 28 and 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, E½, E½NW¼, and NE¼SW¼;
Sec. 32.

T. 22 N., R. 20 E.,
Sec. 3, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 and 9;
Sec. 10, lots 1 to 4, inclusive, lots 8 and 9, SE¼NW¼, and NE¼SW¼;
Sec. 15, W½;
Secs. 16 and 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 21, and 22;
Sec. 23, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 27, lots 2 to 4, inclusive, N½, SW¼, N½SE¼, and all unpatented mining claims;

Secs. 28 and 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 33 and 34;
Sec. 35, lots 5 to 7, inclusive, lots 9, 11, 12, and 13, W½E½, N½NW¼, and all unpatented mining claims.
T. 23 N., R. 20 E.,
Sec. 7, S½, unsurveyed;
Sec. 8, S½;
Sec. 9, S½, partly unsurveyed;
Sec. 10, S½;
Sec. 11, N½SW¼, SW¼SW¼, and E½SE¼;
Sec. 12, S½;
Sec. 14, S½NW¼ and N½SW¼;
Sec. 15, S½NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Secs. 16 to 21, inclusive, unsurveyed;
Sec. 22, lots 2, 3, and lots 5 to 11, inclusive, and SW¼SW¼;
Sec. 27, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Secs. 28, 29, and 30, unsurveyed;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32;
Sec. 33, lots 1 and 2, W½NE¼, W½, and SE¼;
Sec. 34.
T. 17 N., R. 21 E.,
Sec. 7, lots 1 to 4, inclusive, E½W½;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
T. 19 N., R. 21 E.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 8, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 10, N½, N½SW¼, E½NE¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and NW¼SE¼;
Sec. 16, NE¼, N½NW¼, and SE¼NW¼;
Sec. 18, lot 1 and N½NE¼.
T. 20 N., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Secs. 8, 10, and secs. 12 to 16, inclusive;
Sec. 18, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 19, lots 1 to 4, inclusive, E½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½;
Sec. 31, lots 1 to 4, inclusive, and E½;
Sec. 32;
Sec. 33, N½;
Sec. 34;
Sec. 35, N½N½ and SE¼NE¼;
Sec. 36, lots 1, 4, and 5, N½, N½SW¼, and NW¼SE¼.
T. 21 N., R. 21 E.,
Sec. 36.
T. 22 N., R. 21 E.,
Sec. 7, lot 5.
T. 23 N., R. 21 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, N½SW¼, SE¼SW¼, and SE¼;
Sec. 9, N½SE¼ and SW¼;
Sec. 10, NW¼SW¼;
T. 20 N., R. 22 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, 10, 12, 14, and 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 and 22;
Sec. 24, irregular Washoe County portion within W½;
Sec. 26, N½ and N½S½;
Sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½.
T. 21 N., R. 22 E.,
Secs. 32, 34, and 36;
T. 20 N., R. 23 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼; sec. 8;
Sec. 18, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, N½N½, irregular Washoe County portion within SE¼NW¼.
The areas described aggregate 167,137.69 acres in Washoe County.

2. Subject to valid existing rights, the reserved Federal mineral interest in the following described lands is hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from mineral material sales under the Materials Act of 1947 or mineral leasing under the Mineral Leasing Act of 1920, for the protection of lands in Washoe County:

Mount Diablo Meridian

T. 22 N., R. 18 E.,
Sec. 12, E½;
Sec. 24, E½;
Sec. 36, E½.
T. 23 N., R. 18 E.,
Sec. 15, NE¼, E½NW¼, and SE¼;
Sec. 16, W½NE¼ and SE¼NE¼;
Sec. 22, NE¼, SE¼NW¼, and NE¼SW¼;
T. 20 N., R. 19 E.,
Sec. 25, lots 1 to 7, inclusive, and lot 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).
T. 21 N., R. 19 E.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 22 N., R. 19 E.,
Sec. 8;
Sec. 13, SW¼NE¼;
Sec. 14, E½, NW¼, N½SW¼, and SW¼SW¼;
Sec. 18, lots 1 to 4, E½, and E½W½;
Sec. 20;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, and SE¼SE¼;
Sec. 28;
Sec. 30, lots 1 to 4, E½, and E½W½;
Sec. 31, lots 3 and 4, E½SW¼, and SE¼;
Secs. 32 and 34.
T. 17 N., R. 20 E.,
Sec. 18, lots 3 to 11, inclusive, W½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, W½NE¼NW¼SE¼, W½NW¼NW¼SE¼, and NW¼SW¼SE¼.
T. 18 N., R 20 E.,
Sec. 4, lots 3 and 4;
Sec. 34, NE¼SE¼NE¼, W½NW¼SE¼NE¼, NE¼SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼, E½SE¼SW¼NW¼, E½SW¼, NE¼NW¼SW¼, S½N½NE¼SE¼, S½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½SW¼SE¼, NE¼SW¼SW¼SE¼, E½SE¼SW¼SW¼SE¼, W½SE¼SW¼SE¼, W½E½SE¼SW¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, and N½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 2, SE¼SE¼;
Sec. 11, SW¼NE¼;
Sec. 26, W½E½, and W½;
Sec. 32, W½NE¼;
Sec. 34, NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NE¼NE¼, W½NE¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, W½NW¼NE¼SW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, W½W½SE¼NE¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, and E½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 14, lots 1, 2, and 3, and SW¼NE¼;
Sec. 26, SW¼SE¼SW¼ and W½SE¼SE¼SW¼;
Sec. 28, E½SE¼SW¼NE¼NW¼, and W½SW¼SE¼NE¼NW¼;
Sec. 29, lot 8, NW¼SW¼, and SE¼SW¼;
Sec. 30, W½NE¼SE¼, and N½SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼.
T. 21 N., R. 20 E.,
Sec. 1, lots 5, 6, and 7, inclusive, and lots 10 to 22, inclusive;
Sec. 2, lot 2, lots 8 to 46, inclusive, SW¼NE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE, and N½SE¼SE¼;
Sec. 12, lots 3 to 12, inclusive, and SW¼;
Sec. 13, lots 1 and 4.
T. 22 N., R. 20 E.,
Sec. 10, lots 5, 6, and 7, NE¼, and NW¼SE¼;
Sec. 14, lots 5, 6, and 7;
Sec. 24, W½W½;
Sec. 36, S½SE¼.
T. 23 N., R. 20 E.,
Sec. 11, SE¼SW¼ and W½SE¼;
Sec. 14, W½E½ and N½NW¼;
Sec. 15, N½NE¼ and E½NE¼NW¼;
T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, and SW¼SW¼SW¼SW¼.
T. 21 N., R. 21 E.,
Sec. 8, SE¼SW¼NE¼, S½SE¼NE¼, and S½;
Sec. 18, lots 1 and 2, S½NE¼NE¼, and SE¼NE¼;
Sec. 20, NE¼NW¼ and SW¼NW¼.
T. 23 N., R. 21 E.,

Sec. 8, SW¼SW¼;
Sec. 17, W½NW¼ and SW¼;
Sec. 18, lot 1, E½E½, NW¼NE¼, and NE¼NW¼;
Sec. 19, lots 3 and 4, E½E½, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, W½;
Sec. 29, NW¼.
T. 22 N., R. 22 E.,
Sec. 4, lots 1 to 4, S½N½, and S½.
The areas described aggregate 15,813.12 acres in Washoe County.

3. In addition to paragraphs 1 and 2, if any of the non-Federal lands in Washoe County within the areas described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be included in the withdrawal:

T. 21 N., R. 18 E., (on north and east side of U.S. Highway 395).
T. 22 N., R. 18 E.
T. 23 N., R. 18 E., excepting secs. 1 to 5, inclusive, and the N½N½ of secs. 9 to 12, inclusive.
T. 20 N., R. 19 E., (on north and east side of U.S. Highway 395).
T. 21 N., R. 19 E.
T. 22 N., R. 19 E.
T. 23 N., R. 19 E., excepting sec. 4.
T. 16 N., R. 20 E.
T. 17 N., R. 20 E., (on east side of U.S. Highway 395).
T. 18 N., R. 20 E., (on east side of U.S. Highway 395).
T. 19 N., R. 20 E., (on east side of U.S. Highway 395).
T. 20 N., R. 20 E.
T. 21 N., R. 20 E.
T. 22 N., R. 20 E.
T. 23 N., R. 20 E., excepting secs. 2, 4 and 12.
T. 17 N., R. 21 E.
T. 19 N., R. 21 E.
T. 20 N., R. 21 E.
T. 21 N., R. 21 E.
T. 22 N., R. 21 E.
T. 23 N., R. 21 E., secs.18, 19, and secs. 30, 31, and 32.
T. 20 N., R. 22 E.
T. 21 N., R. 22 E.
T. 22 N., R. 22 E.
T. 23 N., R. 22 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 23 E., secs. 5, 7, 17, 19 and 20.
T. 21 N., R. 23 E., sec. 31.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before 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: July 5, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–17494 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf Oil and Gas Lease Sale 181 in the Eastern Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed Sale 181.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 181 in the Eastern Gulf of Mexico Outer Continental Shelf (OCS). This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 181 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for December 5, 2001.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 181 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: July 6, 2001.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 01–17487 Filed 7–11–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 22, 2001, a proposed Consent Decree in *United States* v. *Gulf Coast Recycling, Inc.,* Civil Action No. 8:01–cv–1191–T–24TBM was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief in order to remedy conditions in connection with the release and threatened release of hazardous substances into the environment at the Normandy Park Superfund Site in Hillsborough County, Florida (''Site''). The United States also sought to recover unreimbursed costs incurred and to be incurred for response activities undertaken and to be undertaken at the Site.

The proposed Consent Decree, which settles the liability of Gulf Coast Recycling, Inc. (''GCR''), for violations alleged in the Compliant, provides that GCR will perform the remedy at the Site as set forth in the Record of Decision executed by the Environmental Protection Agency on May 11, 2000. Under the Decree, GCR will also reimburse the United States for $257,181 of past response costs and one hundred percent of all future response costs to be incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Gulf Coast Recycling, Inc.,* D.J. Ref. 90–1–2–07156.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, and at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia, 30303. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $52.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check in the

amount of $10.25 payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–17478 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act, the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and the South Carolina Department of Health and Environmental Control (''SCDHEC'')* v. *Macalloy Corporation (D. S.C.),* Civil Action No. 2:99–4234–18, was lodged with the United States District Court for the District of South Carolina on June 26, 2001. This decree resolves the potential liability of Macalloy alleged by the United States under Sections 309 and 402 of the Clean Water Act, 33 U.S.C. 1319 and 1342; Section 3008(g) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(g); and Section 48–1–330 of the South Carolina Pollution Control Act (''SCPCA''), S.C. Code Ann. § 48–1–330, and dismisses without prejudice claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601–9675. The proposed Decree provides that Macalloy will pay $300,000 from existing funds, with interest over time, and $900,000 additional from money currently held as a RCRA financial assurance, when the money becomes available. Macalloy is also required to control surface water discharges.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States and the South Carolina Department of Health and Environmental Control (''SCDHEC'')* v. *Macalloy Corporation (D. S.C.),* DOJ Ref. #90–5–1–1–4431.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Charleston, South Carolina and at the office of the Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–3104. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8 (Consent Decree only: 32 pgs) or $9.50 (Consent Decree with Appendices) (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–17476 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 238–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ), Civil Division, proposes to modify the following system of records previously published in full text in the **Federal Register** on February 20, 1998 (63 FR 8665): Civil Division Case File System, Justice/CIV–001.

The Civil Division is adding two new routine uses to this system of records. Specifically, the Civil Division will add a new routine use to permit disclosure of information relating to qualified claimants in its Radiation Exposure Compensation Act Program files to the Department of Labor to adjudicate claims for supplemental compensation and benefits to these claimants under the Energy Employees Occupational Injury Compensation Program Act, Pub. L. 106–398, 114 Stat. 1654, Title XXXVI (2000), 42 U.S.C. 7384 *et seq.* In addition, the Civil Division is adding a routine use for disclosure to contractors when necessary to accomplish an agency function related to this system of records.

For public convenience, all existing routine uses are published along with the two new proposed routine uses.

Title 5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of any proposal to add new routine use disclosures or make other major modifications.

You may submit any comments (by 30 days from the publication date of this notice). The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building). If no comments are received, the proposal will be implemented without further notice in the **Federal Register**.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed new routine uses.

Dated: July 3, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/CIV–001

SYSTEM NAME:

Civil Division Case File System

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the

agency or officials thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (4) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (5) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (6) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (7) a record, or any facts derived therefrom, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Civil Division is authorized to appear when the United States, or any agency or subdivision thereof, is a party to litigation and such records are determined by the Civil Division to be arguably relevant to the litigation; (8) to facilitate processing Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records; (9) information may be released to the news media and the public in accordance with 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy; (10) a record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; (11) in any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information; (12) pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; (This routine use was added by **Federal Register** notice of January 31, 2001 (66 FR 8425).) (13) information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans; (This routine use was added by **Federal Register** notice of March 29, 2001 (66 FR 17200).) (14) for all claims made by individuals covered by the Energy Employees Occupational Injury Compensation Program Act, Pub. L. 106–398, 114 Stat. 1654, Title XXXVI (2000), 42 U.S.C. 7384 *et seq.*, the Civil Division may disclose to the Department of Labor all information contained in its Radiation Exposure Compensation Act, (42 U.S.C. 2210 note) files pertinent to those claims; (15) to contractors, experts, consultants employed by the Civil Division when necessary to accomplish an agency function related to this system of records.

* * * * *

[FR Doc. 01–17475 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Signature Flight Support Corp., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Signature Flight Support Corp., et al.,* Civil No. 01–CV–1365. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory sixty-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

On June 20, 2001, the United States filed a Compliant alleging that the proposed acquisition by Signature Flight Support Corp. (''Signature'') of Ranger Aerospace Corporation (''Ranger'') and its subsidiary Aircraft Service International Group, Inc. (''ASIG'') would violate of Section 7 of the Clayton Act, 15 U.S.C. Signature and ASIG each own and operate fixed base operators (''FBOs'') that provide flight support services at various airports in the United States. The proposed Final Judgment, filed at the same time as the Complaint, requires Signature to divest ASIG's FBO business at Orlando International Airport, along with certain tangible and intangible assets. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies available to private litigants who may have been injured by the alleged violations.

Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to

Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 and the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Case Number 1: 01CV01365
Judge: Colleen Kollar-Kotelly
Deck Type: Antitrust
Date Stamp: 06/20/2001

Complaint

The United States of America, by its attorney, acting under the direction of the Attorney General of the United States, brings this civil action to prevent the proposed acquisition by Signature Flight Support Corporation (''Signature'') of the competing fixed base operations of Ranger Aerospace Corporation (''Ranger'') and its wholly owned subsidiary Aircraft Service International Group, Inc. (''ASIG'').

I

Nature of the Action

1. Signature and ASIG both own and operate a fixed base operator (''FBO'') business at Orlando International Airport (''MCO Airport''). FBOs provide flight support services—including fueling, ramp and hangar rentals, office space rentals, and other services—to general aviation customers from facilities at airports. General aviation customers include charter, private and corporate aircraft operators. Signature owns and operates FBOs at forty-four airports around the country, and ASIG owns and operates FBOs at three airports.

2. Currently, Signature and ASIG are the only two FBOs competing at MCO Airport. As the only two FBOs operating at MCO Airport, Signature and ASIG compete head-to-head on price and quality of services to general aviation customers. The acquisition would eliminate this competition, reducing the number of competitors from two to one, creating an FBO monopoly at MCO Airport. The acquisition would give Signature the ability to raise prices and lower the quality of services to MCO Airport general aviation customers. Accordingly, the proposed acquisition of those two FBOs is likely to lessen competition substantially in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II

Jurisdiction and Venue

3. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton act, as amended, 15 U.S.C. 18.

4. All defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Signature and Ranger, through its wholly owned subsidiary, ASIG, provide FBO services to aircraft landing throughout the United States and overseas. Signature, Ranger and ASIG consent to jurisdiction in the District of Columbia for purposes of 15 U.S.C. 22 and 28 U.S.C. 1391(c).

5. This Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 1331 and 1337. Venue is proper pursuant to 28 U.S.C. 1391(c).

III

Defendants and the Transaction

6. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature owns and operates forty-four FBOs in the United States, including operations at MCO Airport. In addition, Signature provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

7. Ranger is a Delaware corporation with its principal place of business in Greenville, South Carolina. ASIG is a wholly owned, indirect subsidiary of Ranger. ASIG, a Delaware corporation headquartered in Dania, Florida, owns and operates three FBOs in the United States and the Bahamas, including operations at MCO Airport. ASIG also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

8. Signature proposes to acquire the stock and assets of Ranger for approximately $137 million.

IV

Trade and Commerce

The Relevant Market

9. FBO services include the sale of jet aviation fuel (''Jet A fuel'') and aviation gasoline (''avgas''), as well as related support services, to general aviation customers. FBOs typically do not charge separately for many services, such as use of customer and pilot lounges, baggage handling, and flight planning support. Rather, they recover the costs of these services in the price that they charge for fuel. There are other services for which FBOs charge separately, including hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation, and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain other services.

10. The largest source of revenue for an FBO is its fuel revenues. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston operated planes. At MCO Airport, Signature and ASIG sold approximately 2.64 million gallons, or $5.4 million, of fuel in the year ending December 1999. Signature and ASIG obtained additional revenues of approximately $524,000 at MCO Airport for other FBO-related services.

11. The provision of FBO services to general aviation customers at MCO Airport is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at an airport except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at MCO Airport.

12. FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use MCO Airport. Although there are other airports in the same region as MCO Airport, those other airports are not economically viable substitutes for general aviation customers flying into MCO Airport. The location, convenience, and facilities of MCO Airport draws customers. General aviation customers have chosen MCO Airport because of its proximity to the Orlando metropolitan area and other destinations, and because of the size and quality of its facilities; using a different airport would significantly increase their driving time and

inconvenience. There are not enough general aviation customers who have selected MCO Airport as their airport and who would switch to another airport to prevent anticompetitive prices increases for fuel and other services at MCO Airport.

Competition and Entry

13. The market for FBO services at MCO Airport is highly concentrated, with only two providers—Signature and ASIG. If Signature acquires the ASIG FBO facility, it will have a monopoly for the market for FBO services at MCO Airport.

14. Signature's acquisition of the ASIG FBO at MCO Airport would eliminate competition in the market for the provision of FBO services to general aviation customers at MCO Airport. The existing competition between Signature's and ASIG's FBOs limits the ability of each to raise prices for fuel and other FBO services. The proposed acquisition would eliminate the constraint each imposes upon the other.

15. The prospect of new entry will not prevent a post merger price increase or service decrease at MCO Airport. There are significant sunk costs involved in building an FBO at MCO Airport. The airport authority has established minimum requirements for an FBO, including 20,000 square feet of hanger storage, a five acre lease, and other minimum operating requirements, and the permitting process at MCO Airport can take up to a year before construction begins. Entry that is timely and sufficient to prevent a post merger price increase or service decrease is unlikely because of these factors.

V

Violation Alleged

16. Unless restrained, Signature's proposed acquisition of ASIG's FBO at MCO Airport is likely to substantially lessen competition and restrain trade unreasonably in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, in the following ways:

a. Actual competition between Signature and ASIG in the market for FBO services at MCO Airport will be eliminated;

b. Concentration in the market for FBO services at MCO Airport will increase significantly, creating a monopoly at MCO Airport;

c. Competition generally in the market for FBO services at MCO Airport will be substantially lessened; and

d. Prices for fuel and other FBO services sold to general aviation customers at MCO Airport will increase and quality of service will decrease.

VI

Request for Relief

The United States requests: (a) Adjudication that Signature's proposed acquisition of ASIG's FBO at MCO Airport would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated this 20th day of June, 2001.

John M. Nannes,
Acting Assistant Attorney General.
Constance K. Robinson,
Director of Operational and Director of Merger Enforcement.
Roger W. Fones,
Chief.
Donna N. Kooperstein,
Asst. Chief.
Salvatore Massa,
Wisconsin Bar No. 1029907,
Douglas Rathbun,
Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–6351.

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first-class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004
James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601
Salvatore Massa

Civil Action No.: 01 1365

(Proposed)

Final Judgment

Whereas, plaintiff, the United States of America (''United States''), filed its complaint in this action on June 20, 2001, and plaintiff and defendants, Signature Flight Support Corporation (''Signature'') and Ranger Aerospace Corporation (''Ranger''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact:

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficult as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed:*

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties in this action. The Complaint states a claim upon which relief may be granted against the defendants, as defined below, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Assets to be Divested.

B. ''Signature'' means defendant Signature Flight Support Corporation, a Delaware corporation with a principal place of business in Orlando, Florida, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Ranger'' means Ranger Aerospace Corporation, a Delaware corporation headquartered in Greenville, South Carolina, its successors and assigns, and its parents, subsidiaries, divisions groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. One of Ranger's wholly owned subsidiaries, Aircraft Service International Group, Inc. (''ASIG''), a Delaware corporation headquartered in Dania, Florida, operates the Assets to be Divested, as defined in Section II(G).

D. ''MCO Airport'' means Orlando International Airport, located in the Orlando, Florida metropolitan area.

E. ''FBO Services'' means any or all services related to providing fixed based operator services to general aviation customers at MCO Airport, including, but not limited to, selling fuel, leasing

hangar, ramp, and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels, but does not include assets related to the commercial jet fueling business at MCO Airport of any of the defendants.

F. ''FBO Facility'' means any and all tangible and intangible assets that comprise the business of providing FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling and maintenance equipment, and other tangible property and all assets used exclusively in connection with the business of providing FBO Services; all licenses, permits, and authorizations issued by any governmental organization relating to the business of providing FBO Services subject to licensor's approval of consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the business of providing FBO Services; all intangible assets used in the development, production, servicing, and sale of FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

G. The ''Assets to be Divested'' means all rights, titles and interests, including all fee, leasehold and real property rights, in the existing FBO Facility that Signature will acquire from ASIG at MCO Airport.

III

Applicability

A. This Final Judgment applies to Signature, Ranger and ASIG, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Assets to be Divested, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV

Divestiture of the Assets

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Assets to be Divested in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 120-day period, the United States will not withhold its agreement to an extension of the period. Defendants agree to use their best efforts to divest the Assets to be Divested as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Assets to be Divested. Defendants shall inform any person making inquiry regarding a possible purchase of the Assets to be Divested that they are being divested pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents regarding the Assets to be Divested customarily provided in a due diligence process, except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Assets to be Divested to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, management, and sale of the Assets to be Divested.

D. Defendants shall permit prospective Acquirers of the Assets to be Divested to have reasonable access to personnel and to make such inspection of the physical facilities of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Assets to be Divested that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Assets to be Divested.

G. Defendants shall warrant to the Acquirer of the Assets to be Divested that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Assets to be Divested, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Assets to be Divested.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Assets to be Divested and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Assets to be Divested can and will be used by the Acquirer as part of a viable, on going business engaged in providing FBO Services at MCO Airport. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer that in the United State's sole judgment has the capability and intent (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of FBO Services at MCO Airport; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V

Appointment of Trustee

A. If defendants have not divested the Assets to be Divested within the time

period specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Assets to be Divested. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

D. A trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and defendants shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth that trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Assets to be Divested.

G. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

VI

Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or a trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If a trustee is responsible, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered, or expressed an interest in or a desire to acquire any ownership interest in the Assets to be Divested together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sales under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was

contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Assets to be Divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an on going basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Assets to be Divested until one year after the divestiture has been completed.

VIII

Hold Separate Order

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX

Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

X

Compliance Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall upon written request of a duly authorized representatives of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants be permitted:

1. Access during defendants' office hours to inspect and copy, or at defendants' option, to require defendants to provide copies of, all books, ledgers, accounts, records, and documents in the possession, custody, or control of defendants relating to any matters contained in the Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information nor any documents obtained by the means provided in this Section shall be divulged by the United States to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

No Reacquisition

Defendants may not reacquire any part of the Assets to be Divested during the term of this Final Judgment.

XII

Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII

Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV

Public Interest Determination

Entry of this Final Judgment is in the public interest.

:Dated _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004

James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601

Salvatore Massa

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 20, 2001, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation (''Signature'') of Ranger Aerospace Corporation (''Ranger''), and its wholly owned subsidiary, Aircraft Service International Group, Inc. (''ASIG''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that Signature and ASIG own and operate fixed base operator (''FBO'') businesses at various airports around the country. ASIG owns and operates three FBOs, including an FBO at Orlando International Airport (''MCO Airport''). The Complaint alleges that Signature and ASIG are the only two providers of FBO services for general aviation customers at MCO Airport, located in Orlando, Florida. The Complaint further alleges that the proposed acquisition will create a monopoly for Signature at this airport, giving it the ability to raise prices and lower the quality of service. Thus, the proposed acquisition would have likely lessened competition substantially in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, as amended 15 U.S.C. 18. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and permanent injunction prevention Signature and Ranger or ASIG from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of Ranger, but requires a divestiture of one of the existing FBOs in order to preserve competition for general aviation customers at MCO Airport. This settlement consists of a Hold Separate Stipulation and Order (''Hold Separate Order''), and a proposed Final Judgment. The proposed Final Judgment orders defendants to sell the existing ASIG FBO assets at MCO Airport to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport. Defendants must complete the divestiture of ASIG's FBO operation at MCO Airport before the later on one hundred twenty (120) calendar days after filing the Complaint, or five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If defendants should fail to accomplish the divestiture, a trustee appointed by the Court would be empowered to divest these assets.

The Hold Separate Order and the proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the ASIG FBO operation at MCO Airport will be held separate and apart from, and operated independently of, defendant Signature's other FBO assets and businesses.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Events Giving Rise to the Alleged violation

A. The Parties and the Proposed Transaction

By an agreement dated November 14, 2000, Signature plans to acquire all the voting securities of Ranger for approximately $137 million.

Signature is a wholly owned subsidiary of BBA group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of forty-four FBOs through the United States, including facilities at MCO Airport. Signature also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

Ranger is a Delaware corporation with its principal place of business in Greenville, South Carolina. ASIG is a wholly owned subsidiary of Ranger, which is a Delaware corporation with its principal place of business in Dania, Florida. ASIG owns and operates three FBOs, including one at MCO Airport. ASIG also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

B. The FBO Services Market

FBOs are facilities located at airports that provide flight support services, including aircraft fueling, ramp and hangar rentals, office space rentals, and other services to general aviation customers. General aviation customers include charter, private and corporate aircraft operators, as distinguished from scheduled commercial airlines.

FBOs sell aircraft fuel, as well as related support services such as ramp, hangar and office space rental. The largest source of revenues for an FBO is its fuel sales. FBOs sell jet aviation fuel for jet aircraft, turboprops and helicopters, and aviation gasoline for smaller, piston driven planes. FBOs do not charge separately for many services offered to general aviation customers, such as use of customer and pilot lounges, baggage handling, and flight planning support; rather, they recover the cost for these services in the price that they charge for fuel. FBOs do charge separately for certain services, such as hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation, and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain those other services.

The Complaint alleges that the provision of FBO services to general aviation customers at MCO Airport is a relevant market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at MCO Airport, except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at MCO Airport.

The Complaint also alleges that FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use MCO Airport. Although there are other airports in the same region as MCO Airport, those airports are not economically viable substitutes for passengers flying into MCO Airport. General aviation customers use MCO Airport because of the airport's location, convenience and facilities. General aviation customers have selected this airport in part because of it proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time, reducing the convenience of maintaining a corporate jet. There are not enough general aviation customers who have selected MCO Airport as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at MCO Airport.

C. Competition Between Signature and ASIG at MCO Airport

Signature and ASIG are direct competitors in the provision of FBO services to general aviation customers at MCO Airport. As the only two FBOs at MCO Airport, Signature and ASIG compete on price and quality of service. General aviation customers have benefited from competition between Signature and ASIG at MCO Airport, receiving lower prices and improved FBO services. The acquisition would eliminate this competition, creating a

monopoly in the market for FBO services to general aviation customers at MCO Airport.

The prospect of new entry is not likely to check Signature's resulting ability to raise prices or reduce service. There are significant sunk costs involved in building an FBO, including the cost of building hangar and ramp facilities. The MCO Airport authority has established minimum requirements for an FBO, including 20,000 square feet of hangar storage, a five-acre lease and other minimum operating requirements. Furthermore, the permitting process to erect a new facility can consume as much as one year before construction begins. Therefore, entry that is timely and sufficient to prevent a post merger price increase or service decrease is unlikely.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Signature's acquisition of ASIG would result in an FBO monopoly at MCO Airport. The Complaint further alleges that the acquisition of Ranger by Signature would substantially lessen competition and restrain trade unreasonably. The transaction would eliminate actual competition between Signature and ASIG in the market for FBO services at MCO Airport, resulting in an increase in prices and a decline in quality of service for fuel and other FBO services.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the acquisition of Ranger by Signature may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the market for FBO services provided to general aviation customers at MCO Airport.

The risk to competition posed by this acquisition at MCO Airport, however, would be eliminated if certain assets, leases, and agreements currently held by ASIG to operate its MCO Airport FBO business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendants, within one hundred twenty (120) calendar days after filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, to divest the ASIG FBO business at MCO Airport, as set out in Section II(G) of the proposed Final Judgment. Unless the United States otherwise consents in writing, defendants are required to divest the existing ASIG FBO business at MCO Airport, including all hangars, ramp and office space, fuel farms, and any related terminal and maintenance facilities located on the property it presently leases as well as any other leases or options on leases it possesses at MCO Airport.

Defendants shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at MCO Airport. Defendants shall transfer ASIG's existing contracts, including customer contracts, and customer lists, for providing FBO services at MCO Airport. Together with the equipment, supplies and customer contracts and lists, these assets will give the qualified purchaser the means to establish itself as a competitive alternative to Signature. Thus, as a result of the divesture required by the proposed Final Judgment, general aviation consumers at MCO Airport will continue to have a choice between two competitive FBOs.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers by supplying all information relevant to the proposed sales. Should defendants fail to complete the divestiture within the required time period, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. Pursuant to Section IV(A), the United States will have the discretion to delay the appointment of the trustee in order to permit other governmental review (such as the county or municipal airport authority).

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendants will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by defendants or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of any of the divestiture assets by defendants, the proposed divestiture may not be completed. Should the United States object to a sale of any of the divested assets by the trustee, that sale shall not be consummated.

Pursuant to Section V(G), should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make a recommendation to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the term of the trustee's appointment.

Under Section VIII of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestiture has been completed, the Assets to be Divested will be maintained as a separate, ongoing, viable FBO business at MCO Airport and kept distinct from Signature's other FBO operations. Until such divestiture, Signature must also continue to maintain and operate the divestiture assets as a viable, independent competitor at MCO Airport, using all reasonable efforts to maintain sales of FBO services to general aviation customers at MCO Airport. Signature must maintain the FBO business at MCO Airport so that it continues to be stable, including maintaining all records, loans, and personnel necessary for their operations.

Section X requires defendants to make viable, upon request, the business records and the personnel of its business. This provision allows the United States to inspect defendant's facilities and ensure that defendants are complying with the requirements of the proposed Final Judgment. Section XI specifically bars defendants from reacquiring the Assets to be Divested during the term of the Final Judgment. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary and its entry by the Court.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suite in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed

Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedure for Commenting on the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of a least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Roger W. Fones, Chief Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Signature, Ranger and ASIG. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of FBO services to general aviation customers at MCO Airport. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII

Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the court is nowhere compelled to go to trial or to engage in expended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanation of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '[3]

VIII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States v. Bechtel,* 648 F.2d 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States v. National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716; *see also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '') (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.,* Supp. 131, 150 (D.D.C. 1982) (citations omitted), *aff'd sub nom, Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: June 20, 2001.

Respectfully submitted,

Salvatore Massa,

Wisconsin Bar No. 1029907

Douglas Rathbun,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy and Agriculture Section, Suite 500, 325 Seventh Street, NW., Washington, DC 20530, (202) 307–6351

Certificate of Mailing

I, Salvatore Massa, hereby certify that, on June 20, 2001, I caused the foregoing document to be mailed on defendants Signature Flight Support Corporation, Ranger Aerospace Corporation and Aircraft Service International Group, Inc., by having a copy mailed, first-class, postage prepaid, to:

William R. Norfolk, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004

James H. Mutchnik, Kirkland & Ellis, 200 East Randolph Dr., Chicago, IL 60601

Salvatore Massa

[FR Doc. 01–17479 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'') Project No. 2000–03

Notice is hereby given that, on June 18, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project No. 2000–3 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Amoco Oil Company, Naperville, IL; Equilon Enterprises LLC, Houston, TX; and Phillips Petroleum Company, Sweeny, TX. The nature and objectives of the venture are to establish a joint effort to test next-generation process heater burners with NO_X emissions in the 5–10 ppm range in a refinery process heater and to assist in the acceleration of burner vendors' commercial development of these burners by observing flame interaction, heat flux, tramp air, and other effects on NO_X emissions. The activities to be carried out include the collection, exchange, and analysis of commercial unit data, and development of correlations or other predictive methods based on available or readily measurable variables.

Participation in this project will remain open until the termination of the Agreement for PERF Project No. 2000–03, and the participants intend to file additional written notification disclosing all changes in membership of the project. Information regarding participation in this project may be obtained by contacting Dr. Colin G. Grieves, Manager, Environmental Management, BP Amoco Naperville Complex, 150 W. Warrenville Road, Mail Code H–7, Naperville, IL 60563–8469.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–17477 Filed 7–11–01; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122 Approval No. 0122 EA–01–164]

In the Matter of JL Shepherd & Associates San Fernando, California; Order Withdrawing Quality Assurance Program Approval (Effective Immediately)

I

JL Shepherd & Associates (JLS&A or Approval Holder) is the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. The approval was issued pursuant to the QA requirements of 10 CFR 71.101. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. Revision No. 5 was issued January 24, 1996, with an expiration date on January 31, 2001, and is under timely renewal. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR part 71, subpart H, to transport or deliver for transport licensed material in a package, JLS&A is required by 10 CFR part 71, subpart C, to have and comply with the package's CoC issued by the NRC.

II

On November 3–4, 1999, NRC staff conducted an inspection of the JLS&A QA activities. The extent and nature of problems identified during this limited scope inspection raised serious concerns about implementation of the JLS&A QA program and missed opportunities, over the period of several years, to self-identify and correct package deficiencies. The inspection identified multiple examples of violations of 10 CFR part 71. These violations concerned shipments of licensed material in Type B packages that were not in accordance with two CoCs. JLS&A made nineteen shipments using two different package designs that did not meet the requirements of the CoCs. The team further identified six nonconformances: specifically, these included 10 CFR 71.13(a), using a package that was fabricated after August 31, 1986; 10 CFR 71.87, failure to determine that the package with its contents satisfies the applicable requirements of part 71; 10 CFR 71.107(c), package design control, where new wood liners were constructed with a wood that did not comply with the design specifications approved by NRC; and 10 CFR 71.111, failure to prepare formal procedures or instructions to establish and maintain model 181361 or model A–0117 packaging in conformance with the CoC. Both a Notice of Violation and a Notice of Nonconformance were issued on March 2, 2000. As a result of the extent and nature of the problems identified during the November 3–4, 1999, inspection, NRC issued a Confirmatory Action Letter on April 24, 2000. As part of its December 4, 2000, response to the NRC Confirmatory Action Letter, JLS&A stated that the packaging used in the August 15, 2000, export to be shipped to Ethiopia via the United Kingdom, which contained 18,000 curies of cobalt-60, met the terms and conditions of the NRC-issued CoC No. 6280.

As a result of an April 17, 2001, letter from the French Competent Authority raising concerns about noncompliance of the August 15, 2000, transportation package undergoing multilateral approval, NRC staff conducted an inspection of the returned package at JLS&A's facility to determine if JLS&A had delivered for export a model A–

0109 irradiator and the A–0117 overpack design that were not in accordance with CoC No. 6280. The inspection conducted on May 29–31, 2001, identified significant concerns with the implementation of the JLS&A QA program regarding the design, use, repair, and maintenance of transportation packages approved for use by NRC under CoC No. 6280. The inspection determined that JLS&A failed to implement portions of the QA program Approval No. 0122. The failure to implement portions of the QA program resulted in JLS&A delivering for export radioactive material in a transportation package that did not comply with the requirements of 10 CFR part 71. A description of the significant findings from the inspection follows:

1. The team determined that the package JLS&A delivered for export was not in accordance with the drawings listed in CoC No. 6280, Condition 5(a)(3). For example, the irradiator contained in the package did not conform to the drawings listed in the CoC No. 6280. The ''stacks'' used to restrict lateral movement of the irradiator were made of fir and pine woods and not hardwood as required by the CoC No. 6280. The ''spacers'' used to center the irradiator did not conform to the drawings listed in the CoC No. 6280.

1. The team determined that JLS&A had not notified NRC of the design changes to the A–0109 irradiator and did not provide a detailed analysis to support these changes to the conditions of the CoC No. 6280 for approval by NRC. This is of significant concern because the A–0109 is described in CoC No. 6280 as part of the packaging. As such, any changes to the drawings listed in CoC No. 6280, Condition 5(a)(3), required NRC approval. JLS&A made numerous changes to the irradiator design features that were not in conformance with the drawings listed in CoC No. 6280, Condition 5(a)(3).

2. The team determined that the JLS&A did not implement QA procedures to assure that the bolts used to attach the lid to the cask met the performance specifications required by CoC No. 6280. JLS&A also could not demonstrate that the balsa wood used to repair the A–0117 overpack met the density specifications identified in Drawing No. A–0117–B, listed in CoC No. 6280 Condition 5(a)(3). The team also determined that JLS&A had not established measures for the identification and control of materials, parts, and components used in the repair of the A–0117 overpack as required by 10 CFR 71.117.

3. The team determined that the A–0109 irradiator included in the shipment, an integral part of the packaging, was manufactured after August 31, 1986. Fabrication of previously approved packaging must have been completed by August 31, 1986 as required by 10 CFR 71.13.

4. The team determined that JLS&A had not obtained multilateral approval required by 10 CFR 71.13 before delivering the package for export shipment since the package was not of the design authorized by the NRC CoC No. 6280 nor as approved by the Competent Authority for the transportation of radioactive materials in the United Kingdom. The United Kingdom approval was issued about 3 months after JLS&A delivered the package for export to Ethiopia via the United Kingdom. The package was subsequently returned to the United States from the United Kingdom.

5. The team determined that the Vice President of JLS&A, who is also the Acting QA/Quality Control Program Plan Administrator, does not have sufficient independence from cost and schedule. JLS&A had not implemented procedures appropriate to preclude a conflict of interest from cost and scheduling as described in the JLS&A QA Program Plan and as required by 10 CFR 71.103(d).

As a result of the findings during the May 29–31, 2001, inspection the NRC no longer has confidence that JLS&A will implement the QA Program approved by NRC in accordance with 10 CFR part 71, subpart H, in a manner that will assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR part 71. This is of significant concern because JLS&A, in addition to holding CoC No. 6280, also holds CoC No. 5984 for transportation packages which may be used by eight licensees, including JLS&A.

These inspection findings are of particular concern in light of the fact that on December 4, 2000, in response to an NRC Confirmatory Action Letter, JLS&A stated that the packaging used in the August 15, 2000, export to Ethiopia via the United Kingdom met the terms and conditions of the NRC issued CoC No. 6280. This package contained 18,000 curies of cobalt-60 in special form sources. The ability of the package to meet the performance requirements for transportation packages is evaluated for a specific design. The package that was to be shipped to Ethiopia via United Kingdom had been modified and did not meet the design that was approved by the NRC. Accordingly, the unapproved package design had not been demonstrated to meet the transportation package approval standards for both normal and accident conditions. This could have resulted in significant safety consequences.

Consequently, I lack the requisite reasonable assurance that the Approval Holder's current operations can be conducted under Approval No. 0122 in compliance with the Commission's requirements and that the health and safety of the public, including the Approval Holder's employees, will be protected. Therefore, the interests of protecting public health and safety, require that Approval No. 0122 be withdrawn. Accordingly, JLS&A may no longer certify to any person that its 10 CFR part 71 transportation activities are conducted under an NRC approved Quality Assurance Program. JLS&A is no longer authorized to design, procure, fabricate, assemble, test, modify, maintain, repair, and use transportation packages for which a 10 CFR part 71 QA program approval is required by 10 CFR part 71, subpart C. Furthermore, pursuant to 10 CFR section 2.202, I find that the significance of the conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR section 2.202 and 10 CFR Parts 71 and 110, *it is hereby ordered, effective immediately, that approval no. 0122 is withdrawn pending further order.*

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind this order upon demonstration by the Approval Holder of good cause.

V

In accordance with 10 CFR 2.202, the Approval Holder must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny

each charge made in this order and set forth the matters of fact and law on which the Approval Holder or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington TX, 76011, and to the Approval Holder if the hearing request is by a person other than the Approval Holder. If a person other than the Approval Holder requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR section 2.714(d).

If a hearing is requested by the Approval Holder or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Approval Holder, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 3rd day of July 2001.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 01–17450 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8006]

Consideration of License Amendment to Kerr-McGee Corporation Technical Center and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request and opportunity for a hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Material License No. SUB–986, issued to the Kerr-McGee Corporation, to perform remediation in accordance with the submitted decommissioning plan of its Technical Center in Oklahoma City, Oklahoma, and leading to release of the property for unrestricted use and subsequent termination of its license.

FOR FURTHER INFORMATION CONTACT: Blair Spitzberg, Ph.D., Chief, Fuel Cycle and Decommissioning Branch at (817) 860–8191 or Rachel Carr, FCDB at (817) 276–6552.

SUPPLEMENTARY INFORMATION: On April 5, 2001, the licensee submitted a decommissioning plan (DP) to the NRC for review that summarized the decommissioning activities which will be undertaken to remediate the Kerr-McGee Technical Center located in Oklahoma County approximately 15 miles northwest of downtown Oklahoma City, Oklahoma. The Kerr-McGee Technical Center was established in 1963 to provide a research and development facility for conducting chemical and radiological analyses for testing and calibration of instrumentation used for mineral prospecting and small-scale laboratory experiments to develop and prove new or proposed changes to processes for the extraction and purification of uranium and thorium. On April 5, 2001, the licensee submitted a decommissioning plan and license amendment request for unrestricted release of the site and subsequent termination of the license. The NRC will require the licensee to remediate the site to meet NRC's decommissioning criteria and, during decommissioning activities, to maintain doses within NRC requirements and as low as reasonably achievable.

NRC Approval Process

Prior to approving the decommissioning plan, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. The Kerr-McGee Technical Center falls under Type III decommissioning facility requirements as defined in NUREG/BR–0241. In addition, the licensee's activities are covered under the categorical exclusion in 10 CFR 51.22(c)(14)(v), ''use of radioactive materials for research and development and for educational purposes.'' The final approval of the decommissioning plan will be incorporated into the license as a license amendment. Facilities under Type III decommissioning requirements will receive a confirmatory survey and a closeout inspection by the NRC. If the confirmatory survey results indicate that the licensee's evaluation of the final radiological status of the site is statistically valid and meets NRC's criteria and NRC has determined that the Final Status Survey demonstrates that the site satisfies NRC requirements, the site is suitable for release from regulatory control. At the time of release of the site or termination of the license, a subsequent **Federal Register** notice will be published to announce the intent of the NRC Staff to release the site for unrestricted use or to terminate the license.

Documents

The Decommissioning Plan submitted by Kerr-McGee Corporation is available for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). Assistance with the Public Electronic Reading Room may be obtained by calling (800) 397–4209.

Notice of Opportunity for Hearing

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by the proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville MD 20852–2738; or

2. By mail, telegram or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d)—that is, filed within 30 days of the date of this notice.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Technical Center, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73125; and

2. The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Arlington, Texas, this 3rd day of July, 2001.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. 01–17451 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 AND 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 180 and 171 to Facility Operating Licenses Nos. NPF–10 and NPF–15, Southern California Edison Company (SCE or the licensee), which revised the Operating License and Technical Specifications for operation of the San Onofre Nuclear Generating Station (SONGS), Units Nos. 2 and 3, located in San Diego County, California. The amendments are effective as of the date of issuance.

The amendments modified the Technical Specifications and Operating License for SONGS Units 2 and 3, to allow SCE to increase the maximum reactor core power level for each unit from 3390 megawatts thermal (MWt) to 3438 MWt, which is an increase of 1.42 percent of rated core thermal power for SONGS Units 2 and 3.

The proposed action is in accordance with the licensee's application for amendment dated April 3, 2001, and supplemented by letters dated April 23, May 11, May 25, May 31, and June 25, 2001.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on April 18, 2001 (66 FR 19996). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment (66 FR 32964, and corrected in 66 FR 33982).

For further details with respect to the action see (1) the application for amendment dated April 3, 2001, (and supplemented by letters dated April 23, May 11, May 25, May 31, and June 25, 2001), (2) Amendments No. 180 to License No. NPF–10, and No. 171 to License No. NPF–15, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 6th day of July 2001.

For the Nuclear Regulatory Commission.

Joseph E. Donoghue,

Senior Project Manager, Project Directorate IV, Section 2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–17449 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the Public of the issuance of a Memorandum of Understanding between the U.S. Army Corps of Engineers (USACE) and the U.S. Nuclear Regulatory Commission (NRC). The purpose of the MOU is to avoid unnecessary duplication of regulatory requirements that may hinder USACE in its remediation of sites under the Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA). Under the MOU, NRC could exercise its discretion to suspend NRC-issued licenses, or portions thereof, at FUSRAP sites. The MOU addresses unrestricted releases under 10 CFR 20.1402, and the MOU will ensure that the criteria of the License Termination Rule or a more stringent requirement will be met. The MOU will enhance interagency dialogue and will make the agencies activities and decisions concerning site decommissioning and cleanup more effective and efficient. The MOU will assist the agencies to reduce unnecessary burden on stakeholders and avoid duplication of regulatory requirements and effort by setting out cooperative conditions, consistent with the protection of the public health and safety.

EFFECTIVE DATE: July 5, 2001.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 11455 Rockville Pike (Mail Stop: 01F13), Rockville, MD. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m., at (301) 415–4737 or toll-free at 1–800–397–4209 or e-mail: pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Amir Kouhestani, NMSS Mail Stop T7-F27, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–0023; Fax (301) 415–5398; e-mail: *aak@nrc.gov.*

Dated at Rockville, Maryland, this 5th Day of July, 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Army Corps of Engineers for Coordination on Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities

Article I—Purpose and Authority

A. This Memorandum of Understanding (MOU) is entered into by and between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers (USACE), (''The Parties'') for the purpose of minimizing dual regulation and duplication of regulatory requirements at FUSRAP sites with NRC-licensed facilities. For activities where a potential for dual regulation could exist, the two agencies agree to cooperate, share information, and/or coordinate activities in their respective programs. This MOU applies to USACE response actions meeting the decommissioning requirements of 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.'' USACE Response actions meeting the restricted release requirements of 10 CFR 20.1403, are outside the scope of this MOU.

B. The NRC has the statutory responsibility for the protection of the public health and safety related to the possession and use of source, byproduct, and special nuclear material under the Atomic Energy Act of 1954, as amended (Public Law 83–703, 68 Stat. 919). This includes ensuring the decommissioning of the nuclear facilities that it licenses. The Commission's licenses and regulations set out conditions to provide for the protection of the public health and safety and the environment. To terminate such licenses, NRC must ensure that licensees meet the Commission's decommissioning requirements including the provisions of 10 CFR 20 subpart E—Radiation Criteria for License Termination.

C. USACE is administering and executing cleanup at FUSRAP sites pursuant to a March 1999, MOU with the Department of Energy and the provisions of the Energy and Water Development Appropriations Acts for Fiscal Years 1998–2001 (Public Laws 105–62, 105–245, 106–60 and 106–377, respectively). Section 611 of Pub. L. 106–60 requires the USACE to remediate FUSRAP sites, in accordance with, and subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR, chapter 1, part 300. Section 611 also confers lead agency status on the USACE for remedy selection. USACE, as provided for in section 121(e) of CERCLA and 40 CFR 300.400(e), is not required to obtain a NRC license for its on-site remediation activities conducted under its CERCLA authority. However, if a response action is required, CERCLA requires the remedy to be protective of human health and the environment.

D. This MOU describes how the two agencies will work together to meet their existing statutory responsibilities. It neither creates nor removes any agency responsibility or authority. This MOU is not an admission of responsibility or liability on the part of the United States with regard to any hazardous substances or operations at a licensed site; does not relieve a license holder of its responsibilities and liabilities under any law; and does not create rights in any third party against USACE, NRC, or the United States.

E. CERCLA obligations imposed on the USACE may duplicate the obligations established by NRC regulations and licenses, resulting in duplicate regulatory requirements at NRC-licensed FUSRAP sites that will impose an added regulatory burden without an added safety benefit. To avoid unnecessary duplication of regulatory requirements and effort, this MOU sets out the conditions, consistent with the protection of the public health and safety, that will permit NRC to exercise its discretion to suspend NRC issued licenses at FUSRAP sites so that NRC requirements do not hinder USACE in its remediation of sites under CERCLA.

F. Each agency will bear its own costs for actions consistent with this MOU, but this does not preclude each agency from recovering costs, based on it's statutory authority, from the licensee or responsible parties.

G. *Use of Terms.*

1. The term ''response action'' means response actions as defined in CERCLA at 42 U.S.C. 9601(25) including removal and remedial actions and related CERCLA enforcement actions.

2. The term ''closeout'' means that all construction activities and reports are complete, the cleanup goals specified in the final ROD are achieved, coordination with regulatory agencies, and publication of notice in accordance with the provisions of CERCLA, the National Contingency Plan (NCP) and USACE procedures have been completed.

3. The term ''completed response action'' means that all construction activities are complete; for components other than ground or surface water, the cleanup goals specified in the ROD are achieved; any ground and/or surface water restoration remedies are operating as designed; and a remedial or removal action report is complete.

4. The term ''FUSRAP site'' means any geographic area certified by the Department of Energy (DOE) to have been used for activities in support of the Nation's early atomic energy program, and determined by USACE to require a response action pursuant to CERCLA or placed into the FUSRAP program pursuant to Congressional direction. A FUSRAP site may overlap all, or any part, of an NRC-licensed site.

5. The term ''possession'' means physical control of the property or

materials for purposes of environmental restoration and protection of the health and safety of the public.

Possession does not require ownership nor is USACE assuming responsibility for the operations and activities of the NRC licensee or owner of the materials. The USACE will take control only of the FUSRAP-related materials on the licensed site as provided in paragraph III. B.. Non-FUSRAP materials, unless the responsibility of the USACE under CERCLA, remain under control of the licensee.

6. The term ''licensed site'' means that a NRC license has been issued, and remains active or suspended, to possess and use material licensed under the Atomic Energy Act at the site.

Article II—Intragency Communication

To provide for consistent and effective communication between NRC and USACE, each agency shall appoint a Principal Representative to serve as its headquarters-level point of contact on matters relating to this MOU. Written notices required by the MOU shall be sent to the USACE's and NRC's Principal representatives. The Principal Representatives are:

Chief, Decommissioning Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Chief, Environmental Division, Directorate of Military Programs, U.S. Army Corps of Engineers 441 G Street, NW., Washington, DC 20314–1000

Article III—Agreement

A. At the request of USACE, NRC will initiate action for the suspension of the NRC license or portions of the license for a FUSRAP site to be remediated by USACE under CERCLA authority contingent upon USACE notifying the NRC in writing that:

(1) USACE is prepared to take physical possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction and be responsible for the protection of the public health and safety from those materials consistent with 10 CFR part 20 ''Standards For Protection Against Radiation'' and other requirements consistent with CERCLA;

(2) USACE will conduct a response action at the licensed site under its FUSRAP and CERCLA authority, with regard to FUSRAP materials subject to NRC jurisdiction, to meet at least the standards required under 10 CFR 20.1402, and

(3) USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities.

Such written notification to the NRC should be provided after the final Record of Decision (ROD), or its equivalent, is issued, if one is prepared, and at least 90 calendar days prior to USACE's expected date of initiation of a site response action so that the NRC can initiate the process for suspension of the license. Prior to submitting the notification, USACE will make a reasonable attempt to obtain the licensee's consent to USACE's proposed action and document the results of this effort in the notification.

B. Depending on the extent of FUSRAP materials and their separability from other hazardous substances on the site, USACE's responsibility may encompass the entire site, portions of the site, all the radioactive materials or just the FUSRAP and commingled materials, as specified in the final ROD. USACE will notify NRC of its findings regarding the type and extent of hazardous substance on a licensed site prior to requesting license suspension. Prior to USACE submitting a request for license suspension on a site where the NRC license suspension will not encompass the entire site, USACE and NRC will meet to agree on the scope of the suspension. The licensee may be involved in these discussions.

C. NRC licensing action for the suspension of the license, or portions of the license, will be effective, subject to:

(1) Written notification from USACE to the NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20 and

(2) The effectiveness rules of the NRC hearing process pursuant to 10 CFR Part 2, ''Rules Of Practice For Domestic Licensing Proceedings And Issuance Of Orders.''

Prior to license suspension, the licensee retains responsibility for meeting the Commission's requirements for protecting the environment and the health and safety of the public.

D. NRC may observe, as it deems warranted, remediation activities being conducted by USACE. For the purpose of scheduling in-process activity observation, USACE shall provide the NRC with the schedule of major activities, regular progress reports on sites' activities, studies, and/or remediation, and planned work stoppages.

E. The NRC shall keep USACE apprised in writing of questions, comments or concerns arising from any NRC observations of USACE response action activities and shall immediately notify the USACE of any conditions having a potential to adversely affect the environment or the health and safety of the public.

F. USACE shall be responsible for the protection of the health and safety of the public consistent with the requirements of CERCLA and 10 CFR part 20 during the time it is in physical possession of the licensed site or portions thereof which are suspended in accordance with the agreement at the time of license suspension.

G. USACE shall remediate the licensed site to meet at least the requirements of CERCLA and of 10 CFR 20.1402. The Applicable or Relevant and Appropriate Requirement (ARAR) in the final executed ROD will include 10 CFR 20.1402 or a more stringent requirement.

H. USACE shall manage all activities and prepare program estimates, funding requirements, and budget justifications for all FUSRAP activities for which it has been given responsibility as provided by the annual Energy and Water Development Appropriations Act, and the terms of this MOU. USACE shall request FUSRAP appropriations in the annual Energy and Water Development Appropriations Act for these activities. USACE shall respond to inquiries from public officials, Congressional interests, stakeholders, and members of the press regarding USACE activities under FUSRAP.

I. USACE shall consult with NRC if USACE surveys, investigations, and data analyses are inconsistent with the NRC description of the potential radioactive and/or chemical contaminants and processes involved in the historical activities at a licensed site at which the USACE is conducting a FUSRAP investigation or response action under CERCLA. USACE shall immediately notify NRC if, as a result of its Preliminary Assessments, Remedial Investigations, or other surveys prior to production of a ROD, conditions warrant a time-critical removal action, and the agencies will identify an appropriate response that protects the environment and the health and safety of the public.

J. USACE shall notify NRC in writing if there is a need for a radiological response action under FUSRAP on any property not covered by the license suspended or to be suspended (whether or not owned by the licensee) as a result of radioactive contamination from a licensed site undergoing a FUSRAP investigation or response action.

K. Following completion of the response action at a FUSRAP site with an NRC-licensed facility, USACE shall provide the NRC with a copy of the CERCLA Administrative Record for the NRC historical public record. At the time of close out USACE will provide NRC with copies of any additional information that has been placed in the CERCLA Administrative Record.

L. USACE shall notify the NRC in writing if there are NRC-licensed facilities on FUSRAP sites that may require coordination with the NRC in addition to the four known sites: Maywood Site (Stepan), Maywood, NJ; CE-Windsor Site, Windsor, CT; St. Louis Downtown Site (Mallinkrodt), St. Louis, MO; and the Shallow Land Disposal Area, Parks Township, PA.

M. USACE shall keep NRC apprised in writing of progress toward completion of Preliminary Assessments and/or Site Investigations at licensed sites to determine:

(1) Whether FUSRAP and commingled materials at the site are a threat or potential threat to public health and safety or the environment as a result of the licensed materials there; and

(2) Whether the release requires a response under CERCLA.

N. The NRC will reinstate the license or portions of the license put into suspension due to USACE's remediation if USACE:

(1) Is no longer controlling the FUSRAP-related portion of the licensed site for radiation protection purposes,

(2) Is no longer proceeding with a response action at the licensed site under CERCLA, or

(3) Has otherwise completed its response action.

At least 90 calendar days prior to USACE terminating its physical possession of the licensed site for purpose of control of radiation, USACE will notify the NRC in writing so that the NRC can initiate the process for reinstating the license. USACE shall promptly notify NRC in writing if annual funding for the FUSRAP response action at an NRC-licensed site does not appear to be sufficient to complete the response action.

O. NRC shall be responsible for appropriate regulatory action, including requiring any further decommissioning if necessary, following license reinstatement.

P. As may be necessary, NRC and USACE will develop working procedures to implement this MOU. Such procedures will be approved by the Principal Representatives.

Article IV—Further Assistance

NRC and USACE shall provide such information as may be reasonably necessary or required, which are not inconsistent with applicable laws and regulations, and the provisions of this MOU, in order to give full effect to this MOU and to carry out its intent.

Article V—Dispute Resolution

Every effort will be made to resolve issues between NRC and USACE by the staff directly involved in the activities at issue, through consultation and communication. If a mutually acceptable resolution cannot be reached, the dispute will be elevated to successively higher levels of management up to the signers of this MOU. If resolution cannot be reached, NRC may in its discretion reinstate the licenses involved after providing a written 30 calendar day advance notice to the USACE. Upon license reinstatement, USACE's obligations under this MOU for the particular site shall cease and the licensee becomes responsible for control of radioactive materials on the licensed site, as well as protecting the environment and the health and safety of the public, subject to NRC regulation and other applicable law. Upon determining that the licensee has established control of the site and hazardous substances, USACE will relinquish possession of the site and hazardous substances, will cease remediation activities, and will vacate the site. License reinstatement constitutes notice of the shift in responsibility for control of the site and its hazardous substances.

Article VI—Amendment and Termination

This MOU may be modified or amended in writing by the mutual agreement of the parties. Either party may terminate the MOU by providing written notice to the other party. The termination shall be effective 60 calendar days following notice, unless the parties agree to a later date. Termination of this MOU does not relieve USACE of its statutory responsibility for protecting the environment or the health and safety of the public until NRC has reinstated the license and the licensee has taken control of the site and its hazardous substances.

Article VII—Effective Date

This MOU shall become effective when signed by authorized officials of NRC and USACE.

Dated: February 2, 2001.

U.S. Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission.

Dated: July 5, 2001.

U.S. Army Corps of Engineers.

Hans A. Van Winkle,

Major General, U.S. Army, Director, Civil Works, U.S. Army Corps of Engineers.

[FR Doc. 01–17452 Filed 7–11–01; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested published review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on May 2, 2001, in 66 FR 22054, at which time a 60-calendar day comment period was announced. This comment period ended July 2, 2001. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

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

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket

Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: Form Renewal.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC 50.

Frequency of Use: Once per investor, per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 850.

Federal Cost: $1,600.00.

Authority for Information Collection: Sections 231 and 234(a), of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 50 form is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: July 6, 2001.

Rumu Sarkar,

Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 01–17426 Filed 7–11–01; 8:45 am]

BILLING CODE 3210–01–M

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATES: July 24, 2001 10 a.m.–4 p.m.

ADDRESSES: Presidential Ballroom, Capitol Hilton, 1001 16th Street, NW., Washington, DC 20036, (202) 393–1000.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting will be open to the public between 10 a.m. and 4 p.m., with a break for lunch between Noon and 1 p.m.

Purpose: This is the second deliberative meeting of the Commission. No public testimony will be heard at this meeting. However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Tuesday, July 24, at 10 a.m. The meeting will take place between 10 a.m. and 4 p.m., with a break for lunch between Noon and 1 p.m. During the meeting, the Commission will discuss its Interim Report.

Records are being kept of all Commission proceedings and will be available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov;*
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW., Washington, DC 20503;
- Telephone at (202) 343–1255;
- Email to Comments@CSSS.gov.

Dated: July 6, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–17492 Filed 7–11–01; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Housing and Urban Development (HUD))—Match Number 1061

AGENCY: Social Security Administration.

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with HUD.

DATES: HUD has filed a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Acting Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 2, 2001.

Glenna Donnelly,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Housing and Urban Development (HUD)

A. Participating Agencies

SSA and HUD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for the computer matching of HUD's tenant data to SSA's title II (Social Security), title XVI (supplemental security income), and

title VIII (special veterans benefits) data and to wage, self-employment and retirement income data. The matching program will provide information confirming the accuracy of tenant-reported income. Administrators of HUD programs rely upon the accuracy of tenant-reported income to determine applicants' and participants' eligibility for, and level of, rental assistance benefits. Underreported or overreported tenant income affects tenant eligibility, level of housing benefits, and HUD subsidies. The matching program will provide indicators of potential underreported and overreported tenant income that will require additional verification to identify inappropriate (excess or insufficient) rental assistance, and perhaps administrative or legal actions.

C. Authority for Conducting the Matching Program

Section 1106 of the Social Security Act (42 U.S.C. 1306); 42 U.S.C. 3544(b) and (c)(2)(A)(ii); and 26 U.S.C. 6103(1)(7)(D)(ix).

D. Categories of Records and Individuals Covered by the Matching Program

HUD will provide information to SSA from its system of records entitled Tenant Housing Assistance and Contract Verification Data. This system of records includes two automated systems know as the multifamily Tenant Characteristics System and the Tenant Rental Assistance Certification System. Each record on the HUD file will be matched to SSA's Master Files of SSN Holders and SSN Applications, SSA's Earnings Recording and Self-Employment Income System, SSA's Master Beneficiary Record; and SSA's Supplemental Security Income and Special Veterans Benefits Record for the purposes described above in Section B.

E. Inclusive Dates of the Matching Program

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–17106 Filed 7–11–01; 8:45 am]
BILLING CODE 4191–02–U

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974, System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of technical revisions to system of records and proposed revision of system descriptions and routine uses.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 USC 552a, notice is given that the U.S. Office of Special Counsel (OSC) is making non-substantive technical revisions to the Privacy Act system notice for the system of records designated ''OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files;'' proposing to change descriptions of certain features of the system of records; and proposing the amendment of two current routine uses, and the addition of a new routine use. The affected system of records is maintained in connection with OSC program responsibilities under 5 U.S.C. 1212, *et seq.*, and 38 U.S.C. 4324.

SUPPLEMENTARY INFORMATION: OSC is an independent investigative and prosecutorial agency. Its responsibilities include investigation of allegations of: (a) Prohibited personnel practices under 5 U.S.C. 2302(b), and other prohibited employment practices under 5 U.S.C. 1216; (b) prohibited political activity by federal and District of Columbia employees under 5 U.S.C. 7321–7326, and by certain state and local government employees under 5 U.S.C. 1501–1508; and (c) prohibited personnel practices in cases referred to OSC by the Merit Systems Protection Board (MSPB) under 5 U.S.C. 1221(f)(3). OSC is authorized to seek appropriate corrective and/or disciplinary action in these matters through litigation before the MSPB. Under 5 U.S.C. 1213, OSC operates a hotline channel for confidential whistleblower disclosures by current and former federal employees or former federal employees. Section 1212(f) of title 5 authorizes OSC to provide advisory opinions on request to government employees and others about whether or not they may engage in specific political activities under the Hatch Act. Finally, OSC is authorized to represent claimants in cases arising under provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), at 38 U.S.C. 4311, *et seq.*

Information developed in connection with these OSC responsibilities is maintained in the OSC/GOVT–1 system of records, which includes certain records subject to the Privacy Act. These include records in complaint files, disclosure files, Hatch Act advisory opinion files, and litigation files (in connection with litigation filed by or against OSC or its employees). The last full notice of the system was published at 64 FR 63359–63361 (November 19, 1999); minor numbering corrections were published at 65 FR 6436 (February 9, 2000).

OSC is revising the OSC/GOVT–1 system notice to: (1) Make non-substantive technical revisions; (2) propose changes in the descriptions of certain features of the system of records to update information shown in prior system notices; and (3) propose the amendment of current routine uses ''p'' and ''q,'' and the addition of a new routine use ''r,'' addressing disclosures in furtherance of OSC and U.S. Department of Labor (DOL) responsibilities for the protection of federal employment rights of veterans and reservists.

Non-substantive technical revisions are made in this notice to correct editorial errors in the November 1999 system notice; add useful citations; reflect changes in the administrative location of the system manager and the system of records; update OSC's official mailing address; and correct the description of routine use ''o'' by restoring the word ''under'' in place of ''use.'' (''[U]nder'' had appeared in prior system notices, but was inadvertently changed to ''use'' in the November 1999 notice.)

This notice also proposes to change descriptions of categories of individuals covered by the system of records, retrievability of records in the system, and system safeguards, to update information shown in prior system notices.

Finally, this notice proposes to amend current routine use ''p,'' by deleting ''and'' at the end of the text, and current routine use ''q,'' by striking the period at the end and adding ''; and''. The notice also proposes a new routine use ''r,'' to disclosures of information by OSC to DOL and others, in furtherance of OSC and DOL responsibilities for protection of federal employment rights under USERRA and the Veterans' Employment Opportunities Act of 1998 (VEOA) (amending title 5). Current routine uses cover OSC disclosures during the processing of all complaints within its jurisdiction, including for investigative and litigation purposes. OSC believes, however, that a routine

use tailored to certain responsibilities of OSC and DOL in processing alleged violations of veterans' and reservists' federal employment rights will facilitate implementation of those responsibilities, consistent with procedures agreed to by OSC and DOL. A brief summary of the responsibilities addressed by the proposed new routine use follows:

Violations of veterans' preference requirements (5 U.S.C. 2302(b)(11)). OSC initially refers alleged violations of veterans' preference requirements to DOL for further action under the VEOA. (The MSPB lacks authority to order corrective action for violations alleged under 5 U.S.C. 2302(b)(11), which makes it a prohibited personnel practice to knowingly take, recommend, or approve, or fail to take, recommend, or approve any personnel action, if doing so would violate a veterans' preference requirement.) OSC has agreed to notify DOL of each such referral. DOL, in turn, will refer matters as appropriate to OSC for possible disciplinary action under 5 U.S.C. 1215.

Violations of employment/re-employment rights (USERRA). Upon request by a claimant, DOL refers unresolved complaints alleging violations of veterans' rights to OSC pursuant to 38 U.S.C. 4324. If OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may represent that person in litigation seeking corrective action before the MSPB (and, as necessary, the Federal Circuit Court of Appeals). In reviewing issues identified in the initial referral, OSC may contact DOL or any agency or person as needed to obtain relevant information on the claimant's entitlement to relief, and may consult with DOL on representation issues. If OSC declines representation, it notifies the claimant. OSC may also notify the agency involved. (No information about the basis for OSC's decision or OSC's assessment of the case is provided to the agency.)

For ease of reference by other government entities and the public, the entire system notice is printed below. It includes all non-substantive technical revisions, proposed changes to descriptions of system features listed above, proposed revisions to routine uses ''p'' and ''q,'' and the proposed new routine use ''r.''

In accordance with 5 U.S.C. 552a(r), OSC has provided a report to the Office of Management and Budget (OMB) and the Congress on significant changes proposed in this notice.

COMMENTS: In accordance with 5 U.S.C. 552a(e)(4) and (11), members of the public are given a 30-day period in which to comment. (OMB, which has oversight responsibility under the Privacy Act, also requires an opportunity for its review of significant changes proposed in the notice.) Any comments should be submitted to OSC in writing by August 13, 2001. Comments should be sent by mail to Erin M. McDonnell, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington DC 20036–4505; comments may also be sent to the same addressee by fax, at (202)–653–5161.

DATES: The non-substantive technical revisions described in this notice are effective upon publication. Other changes proposed in the notice will become effective on [30 days after publication of this notice], unless comments received by OSC before then warrant further changes.

FOR FURTHER INFORMATION CONTACT: Erin M. McDonnell, U.S. Office of Special Counsel, at (202) 653–8971.

OSC/GOVT–1

SYSTEM NAME:

OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files.

SYSTEM LOCATION:

Human and Administrative Resources Management Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The principal categories of individuals covered by the system are persons filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; persons identified as engaging or participating in such practices or activities; persons filing disclosures of alleged wrongdoing by federal agencies, and persons identified as engaging or participating in such wrongdoing; persons requesting advisory opinions on political activity; persons charged by OSC in disciplinary action complaints filed by OSC with the Merit Systems Protection Board (MSPB); and plaintiffs seeking remedies against OSC in litigation related to the performance of its official functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with persons (or their representatives) filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; correspondence with other agencies, entities, or individuals referring matters to OSC for review and/or investigation; exhibits and other documentation from complainants, governmental entities or other third parties; interview records, including notes, summaries, or transcripts; affidavits; reports or other summaries of investigation; factual and legal summaries and analyses; administrative determinations; referrals to other agencies for appropriate action; records created or compiled in connection with litigation by or against OSC, or pertinent to OSC operations; requests and decisions under the Freedom of Information and/or Privacy Acts; and other correspondence and documents arising out of the performance of official OSC functions under 5 U.S.C. 1211–1221, 1501–1508, and 7321–7326; 38 U.S.C. 4324, and other applicable law or regulation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1211–1221, 1501–1508, and 7321–7326; and 38 U.S.C. 4324.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;

b. To disclose information to the Office of Personnel Management (OPM) pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or to obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations;

c. To disclose to the Equal Employment Opportunity Commission or any other agency or office concerned with the enforcement of the anti-discrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition;

d. To disclose information to the MSPB or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;

e. To disclose information to an agency, the MSPB, OPM, and the President reporting, under 5 U.S.C. 1214, the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;

f. To disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;

g. To disclose information to any agency or person regarding allegations of prohibited personnel practices or

other prohibited activity or prohibited political activity filed against an agency or any employee thereof, for the purposes of conducting an investigation, in transmitting information to an agency under 5 U.S.C. 1213(c)(1) and the OSC procedures established thereunder; or to give notice of the status or outcome of the investigation;

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A–19;

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the request of that individual);

k. To furnish information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

l. To produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies;

m. To disclose records to the Department of Justice (DOJ) when:

(1) The OSC, or

(2) Any employee of the OSC in his or her official capacity, or

(3) Any employee of the OSC in his or her individual capacity where the DOJ has agreed to represent the employee, or

(4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the OSC to be relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

n. To disclose records maintained by the OSC in a proceeding before a court or adjudicative body before which the OSC is authorized to appear, when:

(1) The OSC, or

(2) Any employee of the OSC in his or her official capacity,

(3) Any employee of the OSC in his or her individual capacity where the OSC has agreed to represent the employee, or

(4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the OSC determines that use of such records is relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

o. To disclose information to the MSPB to aid in the conduct of special studies by the Board under 5 U.S.C. 1204(a)(3);

p. To disclose information to the Office of Inspector General (OIG) or comparable internal inspection, audit, or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the OSC and the agency OIG or comparable office;

q. To disclose information to the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Special Counsel determines that disclosure is necessary to preserve confidence in the integrity of the OSC investigative process or is necessary to demonstrate the accountability of OSC officers, employees, or individuals covered by this system, or (3) the Special Counsel determines that there exists a legitimate public interest (e.g., to demonstrate that the law is being enforced, or to deter the commission of prohibited personnel practices, prohibited political activity, and other prohibited activity within the OSC's jurisdiction), except to the extent that the Special Counsel determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; and

r. To disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998 further; action under the Veterans' Employment Opportunities Act of 1998 (VEOA); to disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (the Uniformed Services Employment and Reemployment Rights Act of 1994)the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); to disclose information to DOL or any agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or corrective action litigation under 538 U.S.C. 4324.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, ACCESS CONTROLS, RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

RETRIEVABILITY:

Files in this system of records are retrievable by the names of key individuals or agencies involved (e.g., complainants or requesters; subjects identified in corrective action or disciplinary proceedings, warning letters, or other determinations; legal, congressional, or other representatives or points of contact; or key witnesses), although files are generally retrieved by the name of: (a) The complainant alleging a prohibited personnel practice, or other prohibited activity; (b) the alleged subject of a complaint about prohibited political activity; (c) the person filing an allegation through the OSC whistleblower disclosure channel; (d) the name of the person filing a request for an advisory opinion on political activity; (e) the name of the person on whose behalf OSC seeks corrective action, or the person against whom OSC seeks disciplinary action, in litigation before the MSPB; and (f) the plaintiff in litigation against OSC.

SAFEGUARDS:

These records are located in lockable file cabinets or in secured areas. The required use of computer password protection identification features and other system protection methods also restrict access. Access is limited to those agency personnel who have an official need for access to perform their duties.

RETENTION AND DISPOSAL:

NARA keeps records about prohibited personnel practices and other prohibited activity for three years after the matter or case is closed, or for six years if the file has been the subject of a Freedom of Information Act request.

NARA is responsible for disposal of OSC records pursuant to law and regulation.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for records management functions associated with OSC program and administrative files, including those in the OSC/GOVT–1 system of records, is the Records Management Officer, Human and Administrative Resources Management Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington, DC 20036–4505.

NOTIFICATION PROCEDURE:

Individuals who wish to inquire whether this system contains information about them should contact the system manager. To assist in the process of locating and identifying records, individuals should furnish the following:

a. Name and address;

b. Date and place of birth;

c. Social Security number;

d. A description of the circumstances under which records may have been included in the system.

RECORD ACCESS PROCEDURES:

Same as notification procedure, above.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records about them should contact the system manager, identify any information they believe should be corrected, and furnish a statement of the basis for the requested correction along with all available supporting documents and materials.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a variety of sources, consisting of complainants or others on whose behalf allegations, or requests for information, have been submitted or referred to OSC; legal, congressional, or other representatives or points of contact; other government bodies; witnesses and subjects in matters under review; principals involved in litigation matters, including parties and their representatives; and other persons or entities furnishing information pertinent to the discharge of functions for which OSC is responsible.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

a. Complaint, Litigation and Political Activity files containing investigatory material compiled by OSC for law enforcement purposes are exempt to the extent allowed under subsections (k)(2) and (5) of the Privacy Act. This exemption is necessary to protect confidential sources and facilitate the voluntary cooperation of witnesses during inquiries into allegations of prohibited personnel practices or other prohibited activities.

b. Testing or examination material compiled by OSC solely to determine individual qualifications for appointment or promotion in the Federal service is exempt to the extent allowed under subsection (k)(6) of the Privacy Act. This exemption is necessary to prevent the disclosure of information that would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures.

c. OSC reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request, and OSC may refuse access to information compiled in reasonable anticipation of a civil action or proceeding, pursuant to subsection (d)(5) of the Privacy Act.

Dated: June 29, 2001.

Elaine Kaplan,

Special Counsel.

[FR Doc. 01–17418 Filed 7–11–01; 8:45 am]

BILLING CODE 7405–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Request for Public Comments on the Preliminary Draft Consolidated Texts of the Free Trade Area of the Americas (FTAA) Agreement and the FTAA Technical Committee on Institutional Issues

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Office of the United States Trade Representative is providing notice that the preliminary draft consolidated text of the Free Trade Area of the Americas Agreement (FTAA) has been publicly released and posted on the FTAA website at *www.ftaa-alca.org.* The text is available in the four official languages of the FTAA: English, Spanish, French, and Portuguese. The Trade Policy Staff Committee (TPSC) is requesting written comment from the public on the FTAA preliminary draft consolidated text, as well as on the newly established FTAA Technical Committee on Institutional Issues.

DATES: Public comments should be received by 12 Noon, Wednesday, August 22, 2001.

ADDRESSES: Public comments (original plus 20 copies) should be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F St., NW., Fifth Floor, Washington, DC 20508, Attention: Free Trade Area of the Americas Draft Text Release.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs, FTAA Office at (202) 395–5190. The FTAA preliminary draft consolidated text is now available in four languages, through a link at USTR's homepage to the official FTAA website (*www.ftaa-alca.org*) which also contains general information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION:

1. Background

A. Text Release

Western Hemisphere Trade Ministers decided at the Buenos Aires Ministerial meeting on April 7, 2001 to make public the FTAA preliminary draft consolidated text. That decision was endorsed by the hemisphere's leaders at the Quebec Summit of the Americas on April 20–22, 2001. The Ministers' decision to publish the text necessitated the translation of the preliminary draft texts produced by the nine Negotiating Groups (market access; agriculture; services; intellectual property rights; investment; government procurement; competition policy; dispute settlement; and subsidies, antidumping and countervailing duties) into the four official languages of the FTAA: English, Spanish, French, and Portuguese. The text is now available on the official FTAA website in all four languages. The preliminary draft consolidated text contains many brackets, indicating that the draft text enclosed by such brackets has not been agreed to by all FTAA members. Overall U.S. Government positions on the substantive areas covered by the FTAA negotiations can be found on the USTR website: *http://www.ustr.gov/regions/whemisphere/ftaa.shtml*

B. Technical Committee on Institutional Issues

At the Buenos Aires Ministerial, FTAA countries created the Technical Committee on Institutional Issues, known as the ''TCI''. The TCI will

immediately begin the process of developing the overall structure of the FTAA Agreement, including (1) drafting the general provisions of the Agreement, including but not limited to the purposes and objectives of the Agreement, the preamble, the scope and coverage of the obligations, general exceptions, the relationship between the FTAA Agreement and the WTO Agreements, and the relationship between the FTAA Agreement and other regional integration agreements, and (2) making recommendations on institutions which might be required to implement the Agreement, including the human and financial resource implications for any institutional proposals.

2. Public Comments

The TPSC previously has requested public comments on several FTAA issues, including: general US positions and objectives in the FTAA, see 63 FR 128 (July 6, 1998), and 64 FR 248 (December 28, 1999); specific rules of origin in the FTAA, see 66 FR 87 (May 4, 2001); scope of the environmental review for the FTAA pursuant to Executive Order 13141, see 65 FR 233 (December 4, 2000); identification of private sector experts on electronic commerce for the Joint Committee of Experts on Electronic Commerce, see 65 FR 40 (February 29, 2000), 65 FR 150 (August 3, 2000), 64 FR 94 (May 17, 1999), and 63 FR 151 (August 6, 1998); and market access and other issues under the FTAA, see 64 FR 71 (April 14, 1999). The TPSC also asked for comments on the operation of the FTAA Committee of Government Representatives on the Participation of Civil Society, see 63 FR 145 (July 29, 1998); and the TPSC provided notice in 65 FR 121 (June 22, 2000) that the FTAA Committee of Government Representatives on the Participation of Civil Society had issued a request for public comments on trade matters related to the FTAA process.

Written Comments

Written comments, with as much specificity as possible, are invited on:

(a) Any aspect of the FTAA preliminary draft consolidated text; and

(b) The newly established FTAA Technical Committee on Institutional Issues.

Persons submitting written comments should provide the original plus twenty (20) typed copies to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F St., N.W., Fifth Floor, Washington, D.C. 20508, (202) 395–3475, no later than 12 Noon, August 22, 2001. If possible, comments should be submitted before this date.

Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room Three) at the address noted above.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a nonconfidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Nonconfidential submissions will be available for public inspection at the USTR Reading Room in the annex of the Office of the USTR, 1724 F St., N.W., Room Three, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

To be assured of consideration in this round of negotiations, comments should be submitted by no later than 12 Noon on Wednesday, August 22, 2001.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–17435 Filed 7–11–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement or Possible Environmental Assessment on the Riverview Corridor Transit Project Located in the Cities of St. Paul and Bloomington, MN

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement or possible Environmental Assessment.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act, an Environmental Impact Statement (EIS) is being prepared for the Riverview Corridor Transit Project in the cities of St. Paul and Bloomington, Minnesota. Based on the definition of the proposed Bus Rapid Transit (BRT) Alternative after the scoping period, an Environmental Assessment document could be determined to be the appropriate level of environmental documentation for the proposed action. This decision will be made at the end of the scoping period, and will depend upon the nature of the proposed action and its expected impacts.

DATES: One Interagency Scoping Meeting and two Public Scoping Meetings will be held on the following dates and times at the locations indicated.

Interagency Scoping Meeting

July 31, 2001, 2 pm to 4 pm, Metro State University, 700 East 7th Street, St. Paul, Minnesota 55106.

Public Scoping Meetings

July 31, 2001, 6 pm to 8 pm, Metro State University, 700 East 7th Street, St. Paul, Minnesota 55106.

August 1, 2001, 6 pm to 8 pm, West 7th Community Center, 265 Oneida Street, St. Paul, Minnesota 55102.

ADDRESSES: Written comments on the scope of analysis and impacts to be considered should be sent by August 13, 2001 to: Molly Grove, Metro Transit, 560 Sixth Avenue North, Minneapolis, MN 55411–4398; Telephone: (612) 349–7533, Fax: (612) 349–7675; Email: molly.grove@metc.state.mn.us; TTY: (612) 349–7439 (attention Molly Grove).

FOR FURTHER INFORMATION CONTACT: Mr. Joel P. Ettinger, Regional Administrator, Federal Transit Administration (FTA), Region V, 200 West Adams Street, Suite 2410, Chicago, IL 60606; Telephone: (312) 353–2789.

SUPPLEMENTARY INFORMATION: The FTA (the federal lead agency) in cooperation with the Metropolitan Council (the local lead agency) anticipates the preparation of an Environmental Impact Statement (EIS) for the Riverview Corridor Transit Project. As in the Summary, the determination may be made that an Environmental Assessment is the appropriate level of environmental documentation, based on the proposed action definition. This decision will be made at the end of the scoping process and it will depend upon the nature of the proposed action and its expected impacts.

I. Scoping

The FTA and Metropolitan Council invite interested individuals, organizations and federal, state and local agencies to participate in defining the alternatives to be evaluated in the environmental document; in identifying social, economic or environmental impacts to be evaluated; and suggesting alternatives that are less costly or have fewer environmental impacts while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be circulated to all federal, state or local agencies having jurisdiction in the project, and all interested parties currently on the Riverview Corridor mailing list. Other interested parties may request this Scoping Booklet by contacting Molly Grove at (612) 349–7533.

Two public scoping meetings will be held in the study area. The first will be held from 6 pm to 8 pm on July 31, 2001 at the Metro State University. The second meeting will be held from 6:00 pm to 8:00 pm on August 1, 2001 at the West 7th Community Center. One Interagency Scoping Meeting will be held from2 pm to 4 pm on July 31, 2001 at the Metro State University. People with special needs should call Molly Grove at (612) 349–7533. The buildings are accessible to persons with disabilities.

Scoping comments may be made at the public scoping meetings or in writing by August 13, 2001. Comments or questions should be directed to Molly Grove at the address provided above.

II. Description of Study Area

The study area to be analyzed is the Riverview Corridor, which extends 12.3 miles from the Mall of America in Bloomington, through downtown Saint Paul and Saint Paul's Lower East Side. The corridor includes one key roadway (Interstate 35E) two major arterial roadways, West 7th Street and Shepard Road, which traverses the corridor with a railroad alignment and parallels the Mississippi River floodplain.

The Riverview Corridor study area can be described as long and narrow, aligned along a southwesterly to northeasterly axis. The study area limits are generally the Mississippi River on the southeast, I–35E and 7th Street on the northwest, 24th Avenue South and the Mall of America on the southwest, and Arcade Street on the northeast.

Several transportation issues have been identified for the Riverview Corridor. These include mobility limitations, development activity, projected residential population growth, transit captive residents, projected employment growth, efficient connections from the Minneapolis-Saint Paul International Airport to downtown Saint Paul, traffic congestion, and pedestrian vehicular safety.

III. Alternatives

In March 1999, the FTA, in cooperation with the Ramsey County Regional Railroad Authority (RCRRA) issued the Notice of Intent to prepare a Major Investment Study and possible Environmental Impact Statement for the Riverview Corridor in St. Paul, Minnesota. The Major Investment Study (MIS) defined and evaluated two transit technologies for the Riverview Corridor: light rail transit (LRT) and bus rapid transit (BRT). Each technology was reviewed using criteria developed to measure key characteristics important in meeting project goals. These evaluation measures included mobility, economic revitalization and land use, environmental impacts, and cost-effectiveness. Based on the alternative evaluation conducted during the MIS process, the RCRRA chose BRT along 7th Street and a portion of the Canadian Pacific Railroad (CPR) right-of-way as the locally preferred alternative. This action was endorsed by the City of St. Paul and the Metropolitan Council.

The alternatives proposed for consideration in the Riverview Corridor Transit Project environmental document include:

1. *No-Build Alternative*—The No-Build Alternative includes current roadway and transit networks, plus committed and funded transportation projects.

2. *Transportation Systems Management (TSM) Alternative*—The TSM comprises lower cost capital improvements to the existing transportation system to improve transit operations, travel time reliability, and traffic flow. The TSM alternative includes all programmed improvements defined in the No-Build alternative.

3. *Bus Rapid Transit (BRT) Alternative*—A busway would extend from the Mall of America in Bloomington to the Lower East side of Saint Paul. BRT alignment options include West 7th Street, the Canadian Pacific Rail Line, I–35E and Shepard Road. Depending on BRT alignment location and design, modifications to the I–35E/Shepard Road and TH 5/Shepard Road interchanges will be evaluated as part of this project.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and Metropolitan Council will evaluate each alternative for significant environmental, social and economic impacts. Anticipated primary environmental issues include: Land use, historic and archaeological resources, traffic and parking, noise and vibration, parklands, neighborhoods and environmental justice, floodplain encroachment, coordination with ongoing related transportation and economic development projects, and construction impacts. Other issues the EIS or EA will address include natural areas, rare and endangered species, air and water quality, groundwater, energy, potentially contaminated sites, displacements and relocations, ecosystems, water resources, and energy impacts. The impacts will be evaluated both for the construction period and the long-term period of operation of each alternative. In addition, cumulative effects of the proposed project and any irreversible or irretrievable commitment of resources will be identified. Measures to avoid or mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the regulations and guidance established by the Council of Environmental Quality (CEQ), as well as the Code of Federal Regulations, Title 23, Part 771 (23 CFR Part 771) of the FHWA/FTA environmental regulations and policies, the EIS or possible EA, based on the definition of alternative(s) at the end of the scoping process, will include an evaluation of the social, economic and environmental impacts of each of the alternatives selected for evaluation. The environmental document will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA), with the Executive Order 12898 regarding Environmental Justice and will meet the requirements of the US Environmental Protection Agency's transportation conformity regulations (40 CFR 93 and 23 CFR 450.322(b)(8)). After its publication, the Draft Environmental Impact Statement (DEIS) or EA

document will be available for public and agency review and comment. Public hearings will be held on the DEIS or EA document.

If the proposed build alternative(s) require the preparation of an EIS, the Final Environmental Impact Statement (FEIS) will consider comments received during the DEIS public review and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: July 9, 2001.

Joel P. Ettinger,

Region V Administrator, Federal Transit Administration, Chicago, Illinois.

[FR Doc. 01–17483 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11 AM on Monday, July 30, 2001, by conference call in the Administrator's Office, room 5424, 400 7th Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than July 25, 2001, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on July 6, 2001.

Marc C. Owen,

Chief Counsel.

[FR Doc. 01–17421 Filed 7–11–01; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–53]

Extension of Customs Approval for SGS Control Services, Incorporated as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of an extension of customs approval for SGS Control Services, Inc. as a commercial gauger.

SUMMARY: SGS Control Services, Inc. of Houston, Texas, has applied to U.S. Customs under Part 151.13 of the Customs Regulations for an extension of Customs approval as a commercial gauger for their Pasadena, Texas site, to gauge petroleum product, animal and vegetable oils, and organic compounds. Customs has determined that this company meets all of the requirements for an extension of Customs approval as a commercial gauger. Specifically, SGS Control Services, Inc., Pasadena, Texas, has been granted approval to gauge petroleum product under Chapter 27 and Chapter 29, animal and vegetable oils under Chapter 15 and organic compounds under Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Therefore, in accordance with Part 151.13 of the Customs Regulations, SGS Control Services, Inc. is hereby approved to gauge the products named above.

Location: SGS Control Services, Inc. approved site is located at, 530 North Witter, Pasadena, Texas, 77506.

EFFECTIVE DATE: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Parker, National Quality Manager, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: July 2, 2001.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 01–17488 Filed 7–11–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: ''Red Bull North America, Inc.''; Correction

ACTION: Notice of application for recordation of trade name; correction.

SUMMARY: In a document published in the **Federal Register** on June 14, 2001, Customs announced that an application has been filed for recordation of the trade name ''Red Bull North America, Inc.'' under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124). There was an error in that document regarding the trade name for which the application for recordation was filed. This document corrects that error.

Correction of Publication

In the **Federal Register** issue of June 14, 2001, in FR Document 01–14987, on page 32414, in the second column, correct the first sentence of the Summary paragraph to read as follows:

''Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name 'Red Bull North America, Inc.' ''

Dated: July 6, 2001.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 01–17489 Filed 7–11–01; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Thursday,
July 12, 2001

Part II

Federal Financial Institutions Examination Council

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestments; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: The Consumer Compliance Task Force (we) of the Federal Financial Institutions Examination Council (FFIEC) is supplementing, amending, and republishing its Interagency Questions and Answers Regarding Community Reinvestment. The Interagency Questions and Answers have been prepared by staff of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) to answer frequently asked questions about community reinvestment. These Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public.

DATES: *Effective Date of Amended Interagency Questions and Answers on Community Reinvestment:* July 11, 2001.

FOR FURTHER INFORMATION CONTACT: *OCC:* Karen Tucker, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

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SUPPLEMENTARY INFORMATION:

Background

In 1995, the agencies revised the Community Reinvestment Act (CRA) regulations by issuing a joint final rule, which was published on May 4, 1995 (60 FR 22156). *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq.* The agencies published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362).

The revised regulations are interpreted primarily through ''Interagency Questions and Answers Regarding Community Reinvestment,'' which provide informal staff guidance for use by agency personnel, financial institutions, and the public, and which are supplemented periodically. We published our most recent guidance on April 28, 2000 (2000 Interagency Questions and Answers). 65 FR 25088. In addition to issuing the 2000 Interagency Questions and Answers, we re-proposed revisions to one question and answer, as well as a conforming amendment to another question and answer, in the accompanying supplementary information. The proposed revised question and answer addressed whether there must be a direct benefit from community development loans and services and qualified investments to an institution's assessment area. We specifically requested comment addressing the proposed revised question and answer, as well as general comments and questions regarding the CRA regulations. 65 FR at 25090–92.

We received 17 letters in response to our request for comments in the 2000 Interagency Questions and Answers. Comments came from financial institutions or financial institution holding companies (7), community organizations (2), financial institution trade associations (4), one state agency, and others (3). This document supplements, revises, and republishes the 2000 Interagency Questions and Answers based, in part, on questions and comments received from examiners, financial institutions, and other interested parties, and on comments received in response to our request for comments.

As discussed below, this document adopts the revisions to the question and answer about whether there must be a direct benefit to an institution's assessment area for an activity to benefit the assessment area that we proposed in April 2000, along with conforming changes to another existing question and answer, which addresses what is meant by a ''regional area.'' We are also making slight clarifying revisions to eight existing questions and answers and adopting six new questions and answers.

The Interagency Questions and Answers has an index to aid readers in locating specific information in the document. The index contains keywords, listed alphabetically, along with numerical indicators of questions and answers that relate to that keyword. The list of questions and answers addressing each keyword in the index is not intended to be exhaustive. We welcome suggestions for additional entries to the index. Further, when this new version of the Interagency Questions and Answers is made available on the agencies' and the FFIEC's World Wide Web sites, the index question and answer numbers will be linked by hypertext to the questions and answers in the document to facilitate quick reference to relevant information.

Questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The Interagency Questions and Answers employ an abbreviated method to cite to the regulations. Because the regulations of the four agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the Interagency Questions and Answers typically cite only to the suffix. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for nonmember state banks, at 12 CFR 345.26; and for thrifts, at 12 CFR 563e.26. Accordingly, the citation in this document would be to § ____.26. In the few instances in which the suffix in one of the regulations is different, the specific citation for that regulation is provided. The question numbering system consists of the regulatory citation (as described above) and a number, connected by a dash. For example, the first question addressing § ____.21(a) would be identified as § ____.21(a)–1.

Adopting Question and Answer Re-Proposed in April 2000 and Conforming Revisions to One Question and Answer

We are adopting the revisions that we re-proposed in April 2000 to the question and answer about whether there must be a direct benefit to an institution's assessment area for an activity to benefit the assessment area. We are also adopting conforming revisions to another existing question

and answer to provide consistency with the amended question and answer.

Must There Be Some Immediate or Direct Benefit to the Institution's Assessment Area(s) To Satisfy the Regulations' Requirement That Qualified Investments and Community Development Loans or Services Benefit an Institution's Assessment Area(s) or a Broader Statewide or Regional Area That Includes the Assessment Area(s)?

The fifth question and answer addressing §§ ____.12(i) and 563e.12(h) (§§ ____.12(i) & 563e.12(h)–5) addresses whether there must be an immediate or direct benefit to an institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). This question and answer currently states that an institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader statewide or regional organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located in the assessment area(s).

In May 1999, we first proposed revising this question and answer to permit consideration of support for community development organizations or activities serving individuals or geographies located somewhere in the broader statewide or regional area that includes the institution's assessment area. This consideration would be given even if the organization or activity did not have the purpose, mandate or function of serving geographies or individuals within the institution's assessment area(s). Most commenters responding to the 1999 proposal appeared to favor the original proposed revision, as it would provide increased flexibility in engaging in community development activities. However, it appeared that a number of those commenters did not recognize the revised answer as an expansion of existing options for institutions to engage in community development activities outside their assessment area(s). Therefore, we re-proposed for public comment a slightly revised question and answer to ensure that the public understood that the revised question and answer expands the current guidance.

The question and answer, as it was re-proposed in April 2000, contained two approaches to determine whether qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). First, as the agencies have always maintained, if an activity supports an organization or program that benefits the institution's assessment area or a broader statewide or regional area that is larger than, but includes, the assessment area(s), the activity will be considered if the purpose, mandate, or function of the organization or activity includes serving the assessment area(s). Second, if, in light of its performance context, an institution has adequately addressed the community development needs of its assessment area(s), examiners will consider community development activities that benefit low- and moderate-income individuals or geographies somewhere in the broader statewide or regional area that includes the assessment area(s), even if those activities do not have a purpose, mandate, or function of benefiting the institution's assessment area(s).

The following example explained the two approaches. An institution is located in Chicago. Its assessment area is the Chicago metropolitan area. Its community development activities include loans, investments, and services in organizations and projects located in and benefiting Chicago, its assessment area. These activities would be considered under the first approach. The institution's community development activities also include loans and investments in several projects that benefit the entire state of Illinois, including Chicago. These activities also are considered under the first approach. In addition, the institution participated in a community development activity that benefits the entire Great Lakes region, including the Chicago metropolitan area. This activity would also be considered under the first approach. Assume that, after considering its performance context, examiners have determined that the institution has adequately addressed the community development needs of its assessment area through loans, investments or services considered under the first approach. Examiners then would also consider the institution's investment in a community development organization located in Decatur, IL, that will serve only the Decatur area—with no potential that it will ever benefit Chicago, the institution's assessment area. Decatur, of course, is in the statewide area (Illinois) that includes the institution's assessment area. The institution would receive consideration for this activity under the second approach.

The agencies received 14 letters commenting on the proposed question and answer. All of the commenters were generally in favor of the proposed question and answer. As one financial institution commenter stated, ''We believe that community development organizations and programs that operate on a local, statewide, or even multi-state basis ultimately provide benefit to all surrounding areas. Such initiatives help stabilize these markets and provide a ripple effect on neighboring geographies. As the capacity of one area grows, it is possible to leverage that effort to build community development momentum.''

The agencies are adopting the amended question and answer, §§ ____.12(i) & 563e.12(h)–5, as it was proposed in April 2000.

What Is Meant by the Term ''Regional Area''?

In addition, the agencies are also adopting the conforming amendment to question and answer, §§ ____.12(i) & 563e.12(h)–6, which was also proposed in April 2000. This revised question and answer is necessary so that, in cases where an institution has already adequately addressed the community development needs of its assessment area(s), examiner discretion does not unduly impede the broader choice and judgment permitted to institutions for performing community development activities in the relevant statewide or regional area. This conforming amendment clarifies that, if an institution has adequately addressed the community development needs of its assessment area(s), examiners will consider its community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

New Questions and Answers

The agencies are adopting six new questions and answers, which are discussed below.

Revitalize and Stabilize Low- and Moderate-Income Areas

Financial institutions and examiners have asked us about the types of activities that are considered to revitalize and/or stabilize low- and moderate-income areas. In response, the agencies are adopting a new question and answer, §§ ____.12(h)(4) & 563e.12(g)(4)–1, which provides

guidance about such activities. It states that activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract and retain businesses and residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography.

Types of Lending Activities That May Warrant Favorable Consideration as Activities Responsive to the Credit Needs of an Institution's Community

Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. The agencies are adopting a new question and answer, § ____.22(a)–1, which identifies the following activities as being responsive to the needs of an institution's assessment area:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products. Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the institution's lending programs.

Indirect Community Development Services

The agencies are adopting a new question and answer, § ____.24(e)–1, that addresses the conditions under which an institution may receive consideration for community development services offered by affiliates or third parties. The guidance states that, at an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test if those services have not been considered already under the lending or investment test. For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution.

Credit Card Banks' Activities

The agencies are adopting a new question and answer, § ____.25(a)–1, that applies only to credit card banks that are exempt from the definition of ''bank'' in the Bank Holding Company Act (BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA credit card banks). This new guidance explains how a CEBA credit card bank (if designated as a limited-purpose institution) can meet its community's credit needs without losing its exemption from the definition of ''bank.'' This guidance memorializes a letter issued in 1996 by staff at the Board of Governors of the Federal Reserve System to the president of the Association of Financial Services Holding Companies. The guidance clarifies that, although the BHCA restricts CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHCA and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under § ____.25(d)(2) (community development test— indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities as part of the bank's performance context in § ____.21(b)(4).

Effect of Evidence of Other Illegal Credit Practices

Section ____.28(c) of our regulations states that evidence of discriminatory or other illegal credit practices adversely affects the evaluation of an institution's performance. The agencies are adopting a new question and answer addressing this provision. The new question and answer, § ____.28(c)–1, discusses what is meant by ''discriminatory or other illegal credit practices.'' It explains that an institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in

connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;

• The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and

• The Federal Trade Commission Act regarding unfair or deceptive acts or practices.

Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulations.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

Electronic Public Files

Some financial institutions have inquired whether it is acceptable to maintain the required public file information electronically on an intranet or the Internet. The agencies believe that an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in § ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution must also ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

The agencies are adopting a new question and answer, § ____.43(c)–2, which addresses maintaining public files on an intranet or the Internet.

Revised Questions and Answers

The agencies are revising eight existing questions and answers, which are discussed below.

New Markets Venture Capital Companies

The Consolidated Appropriations Act of 2001 (Pub. L. 106–554), enacted December 21, 2000, included the New Markets Venture Capital Program Act of 2000. The New Markets Venture Capital Program, which is administered by the Small Business Administration (SBA), allows the SBA to designate New Market Venture Capital companies (NMVCCs). NMVCCs are investment funds that will promote economic development and create wealth and job opportunities in low-income geographies and among individuals living in such areas through equity-type investments in smaller enterprises located in those low-income geographical areas.

Based on the statutory mandate for NMVCCs, the agencies will presume that any loan to or lawful investment in NMVCCs will promote economic development. Therefore, we are revising § ____.12(h)(3)–1 to reflect this presumption.

Reporting Loans With a Business Purpose That Are Secured by Residential Real Estate

The agencies are adopting revisions to two existing questions and answers to accommodate the difference in treatment between the Call Report and Thrift Financial Report (TFR) instructions concerning loans secured by residential real estate that have a business purpose. Under the Call Report instructions, loans secured by nonfarm residential real estate that are used to finance small businesses must be reported as ''loans secured by real estate'' unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. The TFR instructions, however, allow an institution to classify a loan that meets the definition of a mortgage loan, but that is used to finance small businesses, as a mortgage loan or as a nonmortgage loan according to the purpose of the loan, at the option of the reporting institution. As a result, institutions that file Call Reports and those that file TFRs may treat loans secured by nonfarm residential real estate, but that are for the purpose of financing a small business, in different ways.

The agencies are revising §§ ____.12(u) & 563e.12(t)–3 and § ____.42(c)(2)–1 to be consistent with guidance provided in the Call Report and TFR instructions. The agencies are bifurcating the answer to §§ ____.12(u) & 563e.12(t)–3 to account for the different treatment in the Call Report and TFR instructions. The guidance states that, for banks filing Call Reports, loans secured by nonfarm residential real estate to finance small businesses will typically not be included as ''loans to small businesses'' for Call Report purposes, unless the security interest in the property is taken only as an abundance of caution. The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans have a primary purpose of community development, as defined in the regulations, they may be reported as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as ''Other Secured Lines/Loans for Purposes of Small Business.''

For institutions that file TFRs, depending on how a loan is classified, it is possible that a loan secured by nonfarm residential real estate that finances a small business will be reported as a ''small business loan.'' Loans secured by nonfarm residential real estate to finance small businesses may be reported as small business loans if they are reported on the TFR as nonmortgage, commercial loans. Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans. These loans may be reported as community development loans, if appropriate, or collected as ''Other Secured Lines/Loans for Purposes of Small Business.''

The guidance provided in § ____.42(c)(2)–1 is being revised to be applicable only to banks that file Call Reports. This question and answer is inapplicable to thrifts that file TFRs. The question and answer reiterates that banks that make loans to finance small businesses, which are secured by nonfarm, residential real estate, and for which the security interest was not taken only as an abundance of caution, may either report the loans as community development loans, if appropriate, or may collect and maintain loan information as ''Other Secured Lines/Loans for Purposes of Small Business.''

Clarification of § ____.21(b)(5)–1 Addressing Assigned Ratings Being Adversely Affected by Poor Past Performance

The agencies are clarifying the wording of the answer to this question. We intend no substantive change.

Home Mortgage Loan Modification, Extension, and Consolidation Agreements (MECAs)

In several states, financial institutions use MECAs as an alternative to refinancings for their customers. Existing guidance § ____.22(a)(2)–3 states that an institution may receive

consideration under CRA as ''other loan data'' for MECAs, in which it obtains loans from other institutions without actually purchasing or refinancing the loans. The agencies are clarifying this guidance to indicate that it applies only to home mortgage loans.

Reporting Lines of Credit

The agencies have received inquiries from examiners and our institutions about how institutions should report increases to small business or small farm lines of credit once the total line exceeds the $1 million or $500,000 limit for reporting a loan to a small business or a loan to a small farm, respectively, as described in the Call Report or TFR instructions. Because the Call Report and TFR no longer consider lines of credit that have exceeded the $1 million or $500,000 thresholds as loans to small businesses or loans to small farms, respectively, such lines would also no longer be considered small business or small farm loans for CRA purposes.

The agencies are revising existing question and answer § ____.42–3 to clarify this view.

Clarification of § ____.42(a)–5 Addressing Reporting Data on Refinancings and Renewals of Small Business and Small Farm Loans

In the 2000 Interagency Questions and Answers, the agencies adopted a revised version of § ____.42(a)–5, which discusses collection and reporting of data on small business and farm loans that are refinanced or renewed. The 2000 guidance suggests that if a renewal of $15,000 and new money of $5,000 are provided in connection with the same loan to the same borrower, the two amounts should be reported separately as two separate originations. In response to several communications from institutions indicating that their data systems may not allow such a transaction to be reported as two originations, the agencies are clarifying that institutions may report the two originations (the renewal and the increase in the line) together as a single origination. In the example above, an institution may report one origination of $20,000.

We have also deleted from the answer to this question information that was relevant to data collected in the year 2000 and reported in 2001. Because this data should have been reported by March 1, 2001, this portion of the answer is no longer pertinent. The remaining answer is applicable beginning with data on small business and small farm collected in 2000 and reported in 2001.

Updating § ____.42–4

Consistent with the deletion of the out-dated portion of the answer to § ____.42(a)–5, we are also deleting the part of the answer to § ____.42 '' – that was relevant only to data that was collected in 2000 and reported in 2001. The remaining answer is applicable beginning with data about renewals of lines of credit collected in 2000 that will be reported in 2001.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited public comments on that determination. *See* 58 FR 67478 (Dec. 21, 1993); 59 FR 51250 (Oct. 7, 1994). In response to public comment, the agencies voluntarily prepared a final regulatory flexibility analysis for the joint final rule, although the analysis was not required because it supported the agencies' earlier certification regarding the proposed rule. Because a regulatory flexibility analysis was not required, section 212 of the SBREFA does not apply to the final CRA rule. However, in their continuing efforts to provide clear, understandable regulations and to comply with the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks and thrifts.

The text of the Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§§ ____.11(c)(3) & 563e.11(c)(2) Certain Special Purpose Institutions

§§ ____.11(c)(3) & 563e.11(c)(2)–1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§ ____.11(c)(3) & 563e.11(c)(2)–2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

§ ____.12(a)–1: *Does the definition of ''affiliate'' include subsidiaries of an institution?*

A1. Yes, ''affiliate'' includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§§ ____.12(f) & 563e.12(e) Branch

§§ ____.12(f)–563e.12(e) & 1: *Do the definitions of ''branch,'' ''automated teller machine (ATM),'' and ''remote service facility (RSF)'' include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered ''branches'' and mobile ATMs and RSFs are considered ''ATMs'' and ''RSFs.''

§§ ____.12(f) & 563e.12(e)–2: *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not ''branches'' unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§§ ____.12(h)–563e.12(g) Community Development

§§ ____.12(h) & 563e.12(g)–1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of ''community development'' includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas.

§§ ____.12(h) & 563e.12(g)–2: *Must a community development activity occur inside a low- or moderate-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities outside of low- and moderate-income areas that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these low- or moderate-income areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§§ ____.12(h) & 563e.12(g)–3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

§§ ____.12(h)(1) & 563e.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income Individuals

§§ ____.12(h)(1) & 563e.12(g)(1)–1: *When determining whether a project is ''affordable housing for low- or moderate-income individuals,'' thereby meeting the definition of ''community development,'' will it be sufficient to use a formula that relates the cost of ownership, rental or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of ''affordable housing'' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic and market data to determine the likelihood that the housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal or community action plan, is community development.

§§ ____.12(h)(3) & 563e.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.12(h)(3) & 563e.12(g)(3)–1: *''Community development'' includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. To be considered as ''community development'' under §§ ____.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan to or investment in a SBDC, SBIC, or New Markets Venture Capital Company promotes economic development.

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the

same geography that does not directly provide additional jobs or services to the community.

§§ ____.12(h)(4) & 563e.12(g)(4) Activities That Revitalize or Stabilize Low- or Moderate-Income Geographies

§ ____.12(h)(4) & 563e.12(g)(4)–1: *What are activities that revitalize or stabilize a low- or moderate-income geography?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract and retain businesses and residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local or tribal government plan for the revitalization or stabilization of the geography. To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see §§ ____.12(h) & 563e.12(g)–2 and §§ ____.12(i) & 563e.12(h)–4.

§§ ____.12(i) & 563e.12(h) Community Development Loan

§§ ____.12(i) & 563e.12(h)–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.
- Local, state, and tribal governments for community development activities; and
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

§§ ____.12(i) & 563e.12(h)–2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans. Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* § ____.42(b)(2)–2.

§§ ____.12(i) & 563e.12(h)–3: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of ''community development.''

§§ ____.12(i) & 563e.12(h)–4: *The regulation indicates that community development includes ''activities that revitalize or stabilize low- or moderate-income geographies.'' Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.

§§ ____.12(i) & 563e.12(h)–5: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The

institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§§ ____.12(i) & 563e.12(h)–6: *What is meant by the term ''regional area''?*

A6. A ''regional area'' may be as small as a city or county or as large as a multistate area. For example, the ''mid-Atlantic states'' may comprise a regional area.

Community development loans and services and qualified investments to statewide or regional organizations that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus less responsive to assessment area needs.

In addition, as long as an institution has adequately addressed the community development needs of its assessment area(s), it will also receive consideration for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

§§ ____.12(i) & 563e.12(h)–7: *What is meant by the term ''primary purpose'' as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A7. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low-or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in §§ ____.12(h) or 563e.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low-or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§§ ____.12(j) & 563e.12(i) Community Development Service

§§ ____.12(j) & 563e.12(i)–1: *In addition to meeting the definition of ''community development'' in the regulation, community development services must also be related to the provision of financial services. What is meant by ''provision of financial services''?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low-and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§§ ____.12(j) & 563e.12(i)–2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§§ ____.12(j) & 563e.12(i)–3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other

financial services education to promote community development and affordable housing;

• Establishing school savings programs and developing or teaching financial education curricula for low-or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals; and

• Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including ''Electronic Transfer Accounts'' provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

§§ ____.12(k) & 563e.12(j) Consumer Loan

§§ ____.12(k) & 563e.12(j)–1: *Are home equity loans considered ''consumer loans''?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§§ ____.12(k) & 563e.12(j)–2: *May a home equity line of credit be considered a ''consumer loan'' even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a ''consumer loan'' if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be ''double counting'' because part of the line may also have been reported under HMDA.

§§ ____.12(k) & 563e.12(j)–3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§§ ____.12(m) & 563e.12(l) Home Mortgage Loan

§§ ____.12(m) & 563e.12(l)–1: *Does the term ''home mortgage loan'' include loans other than ''home purchase loans''?*

A1. Yes. ''Home mortgage loan'' includes a ''home improvement loan'' as well as a ''home purchase loan,'' as both terms are defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, loans for the purchase of manufactured homes, and refinancings of home improvement and home purchase loans.

§§ ____.12(m) & 563e.12(l)–2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as ''other loan data.'' Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider this other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§§ ____.12(n) & 563e.12(m) Income Level

§§ ____.12(n) & 563e.12(m)–1: *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for geographies, i.e., census tracts and block numbering areas, are derived from Census Bureau information and are updated every ten years. Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. *See* Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices. The income levels for individuals are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. Institutions may contact HUD at (800) 245–2691 to request a copy of ''FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions.''

Alternatively, institutions may obtain a list of the 1990 Census Bureau-calculated and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by calling the Federal Financial Institution Examination Council's (FFIEC's) HMDA Help Line at (202) 452–2016. A free copy will be faxed to the caller through the ''fax-back'' system. Institutions may also call this number to have ''faxed-back'' an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at <http://www.ffiec.gov>.

§§ ____.12(o) & 563e.12(n) Limited Purpose Institution

§§ ____.12(o) & 563e.12(n)–1: *What Constitutes a ''Narrow Product Line'' in the Definition of ''Limited Purpose Institution''?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§§ ____.12(o) & 563e.12(n)–2: *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the other lending provided as an incident to the institution's wholesale lending?
- Are the loans provided as an accommodation to the institution's wholesale customers?
- Are the loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§§ ____.12(o) & 563e.12(n)–3: *Do ''niche institutions'' qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) (''niche institutions'') generally would not qualify as limited purpose (or wholesale) institutions.

§§ ____.12(s) & 563e.12(r) Qualified Investment

§§ ____.12(s) & 563e.12(r)–1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§§ ____.12(s) & 563e.12(r)–2: *Are mortgage-backed securities or municipal bonds ''qualified investments''?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs in order to qualify. *See also* § ____.23(b)–2.

§§ ____.12(s) & 563e.12(r)–3: *Are Federal Home Loan Bank stocks and membership reserves with the Federal Reserve Banks ''qualified investments''?*

A3. No. Federal Home Loan Bank (FHLB) stock and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* §§ ____.12(j) & 563e.12(i)–3.

§§ ____.12(s) & 563e.12(r)–4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs) and specialized SBICs, that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and

moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

§§ ____.12(s) & 563e.12(r)–5: *Will an institution receive consideration for charitable contributions as ''qualified investments''?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term ''grant.'' A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§§ ____.12(s) & 563e.12(r)–6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or ''bought down'' the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the innovativeness and complexity of the community development loan within the bounds of safe and sound banking practices.

§§ ____.12(s) & 563e.12(r)–7: *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution in the service test if the activity is a community development service.

§§ ____.12(t) & 563e.12(s) Small Institution

§§ ____.12(t) & 563e.12(s)–1: *How are the ''total bank and thrift assets'' of a holding company determined?*

A1. ''Total banking and thrift assets'' of a holding company are determined by combining the total assets of all banks and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.

§§ ____.12(t) & 563e.12(s)–2: *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A2. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has less than $250 million in assets and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. § 3103(a)(8)).

§§ ____.12(u) & 563e.12(t) Small Business Loan

§§ ____.12(u) & 563e.12(t)–1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of ''loan to small business'' in the instructions in the ''Consolidated Reports of Conditions and Income'' (Call Report) and ''Thrift Financial Reports'' (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition.

§§ ____.12(u) & 563e.12(t)–2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by ''nonfarm nonresidential properties,'' as defined in the Call Report and TFR, in amounts less than $1 million.

§§ ____.12(u) & 563e.12(t)–3: *Are loans secured by nonfarm residential real estate to finance small businesses ''small business loans''?*

A3. *Applicable to banks filing Call Reports:* Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as ''small business'' loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of ''Loan Secured by Real Estate.'') The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as ''Other Secured Lines/Loans for Purposes of Small Business.''

Applicable to institutions that file TFRs: Possibly, depending how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage, commercial loans. (*See* TFR Q&A No. 62.) Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans.

§§ ____.12(u) & 563e.12(t)–4: *Are credit cards issued to small businesses considered ''small business loans''?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§§ ____.12(w) & 563e.12(v) Wholesale Institution

§§ ____.12(w) & 563e.12(v)–1: *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in §§ ____.12(o) & 563e.12(n)–2.

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

§ ____.21(a)–1: *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance.

§ ____.21(b) Performance context

§ ____.21(b)–1: *Is the performance context essentially the same as the former regulation's needs assessment?*

A1. No. The performance context is a broad range of economic, demographic, and institution-and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with much of this information prior to the examination. The performance context is not a formal or written assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

§ ____.21(b)(2)–1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low-and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)–2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies will consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies will share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

§ ____.21(b)(4)–1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

§ ____.21(b)(5)–1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of ''needs to improve'' in the past may receive a rating of ''substantial noncompliance'' if its performance has not improved.

§ ____.21(b)(5)–2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)–1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the institution's lending programs.

§ ____.22(a)(1) Types of Loans Considered

§ ____.22(a)(1)–1: *If a large retail institution is not required to collect and report home mortgage data under the*

HMDA, will the agencies still evaluate the institution's home mortgage lending performance?

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)–2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects; and an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret ''substantial majority'' to be so significant a portion of the institution's lending activity by number or dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

§ ____.22(a)(2)–1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance.

§ ____.22(a)(2)–2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)–3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECAs), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR pt. 203?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. An institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as ''other loan data.''

§ ____.22(a)(2)–4: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A4. Yes. The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. The test does not take into account whether or not such loans are guaranteed.

§ ____.22(b) Performance Criteria

§ ____.22(b)–1: *How will examiners apply the performance criteria in the lending test?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.22(b)(1) Lending Activity

§ ____.22(b)(1)–1: *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

§ ____.22(b)(2) & (3)–1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels and among borrowers of different income levels and businesses of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)–2: *Must an institution lend to all portions of its assessment area?*

A2. The term ''assessment area'' describes the geographic area within which the agencies assess how well an institution has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract or block numbering area is within an institution's assessment area(s) the institution must lend to that census tract or block numbering area. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)–3: *Will examiners take into account loans made by affiliates when evaluating the*

proportion of an institution's lending in its assessment area(s)?

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)–4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)–5: *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4); Community Development Lending

§ ____.22(b)(4)–1: *When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under § ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the § ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under § ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

§ ____.22(b)(5)–1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, a bank may establish a technical assistance program under which the bank, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, a bank may implement a program under which, in addition to providing financing, the bank also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to

serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

§ ____.22(c)(1)–1: *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

§ ____.22(c)(2)(i)–1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

§ ____.22(c)(2)(ii) If an Institution Elects To Have Its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect To Have the Agency Consider All Loans Within That Lending Category in That Particular Assessment Area Made by All of the Institution's Affiliates

§ ____.22(c)(2)(ii)–1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits ''cherry-picking'' affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)–2: *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against ''cherry-picking'' to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

§ ____.22(d)–1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation (''CDC'') that primarily lends in low- and moderate-income areas or to low-and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. § ____.23(b)–1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

§ ____.22(d)–2: *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

§ ____.22(d)–3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata

share of the same community development loans under 12 CFR____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

§ ____.23(a)–1: *May an institution receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1: Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between ''direct'' and ''indirect'' investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(b) Exclusion

§ ____.23(b)–1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming a share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would only receive consideration under the investment test for the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(b)–2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance Criteria

§ ____.23(e)–1: *When applying the performance criteria of § ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. Although § ____.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits an examiner to weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low -or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Public Evaluation. However, no matter how a qualified investment is handled for purposes of § ____.23(e)(1), it will also be evaluated with respect to the qualitative performance criteria set forth in § ____.23(e)(2), (3) and (4) . By applying all criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.

§ ____.23(e)–2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of

legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(d) Performance Criteria—Retail Banking Services

§ ____.24(d)–1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines (''ATMs''). The principal focus is on an institution's current distribution of branches; therefore, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)–2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to § ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services?

§ ____.24(d)(3)–1: *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low-and moderate-income areas and individuals. The list of systems in the regulation is not intended to be inclusive.

§ ____.24(d)(3)–2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(e) Performance Criteria—Community Development Services

§ ____.24(e)–1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test (see § ____.23(b)–1). For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. See §§ ____.22(c) and .23(c).

§ ____.25 Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(a) Scope of Test

§ ____.25(a)–1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of ''bank'' in the Bank Holding Company Act (the BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHC Act and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under § ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the

consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in § ____.21(b)(4).

§ ____.25(d) Indirect Activities

§ ____.25(d)–1: *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

§ ____.25(e)–1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

§ ____.25(f)–1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26(a) Performance Criteria

§ ____.26(a)–1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider ''lending-related activities,'' including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

§ ____.26(a)–2: *What is meant by ''as appropriate'' when referring to the fact that lending-related activities will be considered, ''as appropriate,'' under the various small institution performance criteria?*

A2. ''As appropriate'' means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request.

§ ____.26(a)–3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(a)–4: *Under the small institution performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments and letters of credit.

§ ____.26(a)–5: *Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purposes of determining whether the small institution receives a satisfactory CRA rating.

§ ____.26(a)(1) Loan-to-Deposit Ratio

§ ____.26(a)(1)–1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(a)(1)–2: *How is the ''reasonableness'' of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(a)(1)–3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic*

loan-to-deposit ratio from the foreign loan-to-deposit ratio?

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(a)(2) Percentage of Lending Within Assessment Area(s)

§ ____.26(a)(2)–1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions, loan demand, the institution's size, financial condition and business strategies, and branching network and other aspects of the institution's lending record.

§ ____.26(a)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

§ ____.26(a)(3) & (4)–1: How will a small institution's performance be assessed under these lending distribution criteria?

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use proxies such as loan size for estimating borrower characteristics, where appropriate.

§ ____.26(b) Performance Rating

§ ____.26(b)–1: *How can a small institution achieve an ''outstanding'' performance rating?*

A1. A small institution that meets each of the standards for a ''satisfactory'' rating and exceeds some or all of those standards may warrant an ''outstanding'' performance rating. In assessing performance at the ''outstanding'' level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an ''outstanding'' performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a ''satisfactory'' rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated ''outstanding'' based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated ''outstanding.''

§ ____.26(b)–2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in §§ ____.12(i) & 563e.12(h)–6.

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

§ ____.27(c)–1: *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)–2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

§ ____.27(f)(1)–1: *How should ''measurable goals'' be specified in a strategic plan?*

A1. Measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

§ ____.27(g)(2)–1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of

thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

§ ____.28–1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a ''satisfactory'' or ''outstanding'' CRA rating?*

A1. No. Moreover, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a ''needs to improve'' CRA rating. However, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating.

§ ____.28–2: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(a) Ratings in General

§ ____.28(a)–1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state (''multistate institution'') will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

§ ____.28(a)–2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state (''single-state institution'') will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)–3: *How do the agencies weight performance under the lending, investment and service test for large retail institutions?*

A3. A rating of ''outstanding,'' ''high satisfactory,'' ''low satisfactory,'' ''needs to improve,'' or ''substantial noncompliance,'' based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of ''satisfactory'' unless it receives at least ''low satisfactory'' on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.28(c) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

§ ____.28(c)–1: *What is meant by ''discriminatory or other illegal credit practices''?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

§ ____.29(a)–1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In cases in which CRA performance is a relevant factor, information from a CRA performance examination of the institution is a particularly important consideration in the applications process because it represents a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)–2: *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

§ ____.29(b)–1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the applications process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decision. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

§ ____.29(b)–2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. These agreements are not monitored or enforced by the agencies.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

§ ____.41(a)–1: *How do the agencies evaluate ''assessment areas'' under the revised CRA regulations compared to how they evaluated ''local communities'' that institutions delineated under the original CRA regulations?*

A1. The revised rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its ''local community'' or assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion as they did under the original regulation. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

§ ____.41(a)–2: *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)–3: *Can a financial institution identify a specific ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography.

§ ____.41(c) Geographic Area(s) for Institutions Other than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of one or More MSAs or one or More Contiguous Political Subdivisions

§ ____.41(c)(1)–1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of

the census tracts or block numbering areas (''geographies'') in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)–2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with § ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

§ ____.41(d)–1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts or block numbering areas) in their assessment areas and generally should include entire political subdivisions. Because census tracts and block numbering areas are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May not Arbitrarily Exclude Low- or Moderate-Income Geographies

§ ____.41(e)(3)–1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond a CMSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

§ ____.41(e)(4)–1: *What are the maximum limits on the size of an assessment area?*

A1. An institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA. Similarly, an assessment area may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within a CMSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution shall delineate separate assessment areas for the areas inside and outside a CMSA (or MSA if the MSA is not located in a CMSA) if the area served by the institution's branches outside the CMSA (or MSA) extends substantially beyond the CMSA (or MSA) boundary. Similarly, the institution shall delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)–2: *Can an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA if the MSA is not located in a CMSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area (so, in this example, there would be three assessment areas). However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.

§ ____.42—Data collection, reporting, and disclosure

§ ____.42–1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of *either* of the prior two calendar years, had total assets of less than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

For example:

Date	Institution's asset size (in millions)	Data collection required for following calendar year?
12/31/94	$240	No.
12/31/95	260	No.
12/31/96	230	No.
12/31/97	280	No.
12/31/98	260	Yes, beginning 1/01/99.

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the

subsequent year. In the example, above, the institution would report the data collected for calendar year 1999 by March 1, 2000.

The Board of Governors of the Federal Reserve System is handling the processing of the reports for all of the primary regulators. The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: Attention: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, NW., 5th Floor, Washington, DC 20006.

§ ____.42–2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs must follow the precise format for the new CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.

§ ____.42–3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report and TFR instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as ''other loan data.''

§ ____.42–4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm or consumer purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* § ____.42(a)–5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 203.

§ ____.42–5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion.
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ ____.42–6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may send a written request to: Attn.: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, NW., 5th Floor, Washington, DC 20006.

They may also call the CRA Assistance Line at (202) 872–7584 or send Internet e-mail to CRAHELP@FRB.GOV.

§ ____.42–7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions must be prepared to identify those loans, investments and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required To Be Collected and Maintained

§ ____.42(a)–1: *Must institutions collect and report data on all commercial loans under $1 million at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC-C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either ''Loans secured by nonfarm or nonresidential real estate'' or ''Commercial and Industrial loans'' in Part I of the Call Report or TFR.

§ ____.42(a)–2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain in a standardized, machine readable format information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination;
- The loan location; and
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract or block numbering area. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)–3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)–4: *Should institutions collect and report data on all agricultural loans under $500,000 at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either ''Loans to finance agricultural production and other loans to farmers'' or ''Loans

secured by farmland'' in Part I of the Call Report and TFR.

§ ____.42(a)–5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is no longer necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)–6: *Does a loan to the ''fishing industry'' come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans ''made for the purpose of financing fisheries and forestries, including loans to commercial fishermen'' as a component of the definition for ''Loans to finance agricultural production and other loans to farmers.'' Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the revised regulation, capture both ''Loans to finance agricultural production and other loans to farmers'' and ''Loans secured by farmland.''

§ ____.42(a)–7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes, but the predominant part of which is for small business purposes?*

A7. The institution has the option of reporting the portion of the home equity line that is for home improvement purposes under HMDA. That portion of the loan would then be considered when examiners evaluate home mortgage lending. If the line meets the regulatory definition of a ''community development loan,'' the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as ''Other Secured Lines/Loans for Purposes of Small Business.''

§ ____.42(a)–8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)–9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with ''0'' in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)–10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices dictate that an institution know the location of its customers and loan collateral. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to post office box numbers or rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number or post office box, the institution knows the location (i.e., the census tract or block numbering area) of the borrower or loan collateral. Once the institution has this information available, it should assign a census tract or block numbering area to that location (geocode) and report that information as required under the regulation.

For loans originated or purchased in 1998 or later, if the institution cannot determine the borrower's street address, and does not know the census tract or block numbering area, the institution should report the borrower's state, county, MSA, if applicable, and ''NA,'' for ''not available,'' in lieu of a census tract or block numbering area code.

§ ____.42(a)(2) Loan Amount at Origination

§ ____.42(a)(2)–1: *When an institution purchases a small business or small farm loan, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the ''original amount of the loan'' to determine whether a loan should be reported as a ''loan to a small business'' or a ''loan to a small farm'' and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)–2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than

originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)–3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business' employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the ''small business loan'' definition in the regulation are met. The credit card program's ''amount at origination'' is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

§ ____.42(a)(3)–1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the business headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

§ ____.42(a)(4)–1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)–2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating ''revenues not known'' on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)–3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue.

§ ____.42(a)(4)–4: *When collecting and reporting the gross annual revenue of small business or farm borrowers, do institutions collect and report the gross annual revenue or the adjusted gross annual revenue of its borrowers?*

A4. Institutions collect and report the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and report the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution would not indicate on the CRA data collection software that the gross annual revenues of the borrower are $1 million or less. (*See* § ____.42(a)(4)–2.)

§ ____.42(b) Loan Information Required To Be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

§ ____.42(b)(1)–1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract or block numbering area in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

§ ____.42(b)(2)–1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)–2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definitions of home mortgage, small

business, or small farm loans only in those respective categories even if they also meet the definition of community development loans. As a practical matter, this is not a disadvantage for retail institutions because any affordable housing mortgage, small business, small farm or consumer loan that would otherwise meet the definition of a community development loan will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* § ____.22(b)(2) & (3)–4.

Limited purpose and wholesale institutions also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories; however, they must also report any loans from those categories that meet the regulatory definition of ''community development loans'' as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm and consumer loans.

§ ____.42(b)(2)–3: *When the primary purpose of a loan is to finance an affordable housing project for low-or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

§ ____.42(b)(3) Home Mortgage Loans

§ ____.42(b)(3)–1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

§ ____.42(c)(1)–1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

§ ____.42(c)(1)(iv)–1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)–2: *May an institution list ''0'' in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)–3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§§ ____.42(c)(1)(iv)–4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other Loan Data

§ ____.42(c)(2)–1: *Schedule RC–C, Part II of the Call Report does not allow banks to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution.* (See *§§ ____.12(u) & 563e.12(t)–3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May a bank collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the bank should collect and report information about the loans as community development loans. Otherwise, *at the bank's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. A bank may collect this information as ''Other Secured Lines/Loans for Purposes of Small Business'' in the individual loan data. This information should be maintained at the bank but should *not* be submitted for central reporting purposes.

§ ____.42(c)(2)–2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)–3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as ''other loan data'' under 12 CFR ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on Affiliate Lending

§ ____.42(d)–1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may either provide examiners with the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments

§ ____.43(a)(1)–1: *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)–2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (§ ____.26(a)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(1)–3: *May an institution include a response to its CRA Performance Evaluation in its public file?*

A3. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

§ ____.43(b)(1)–1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)–2: *May an institution retain the compact disc provided by the Federal Financial Institution Examination Council that contains its CRA Disclosure Statement in its public file, rather than printing a hard copy of the CRA Disclosure Statement for retention in its public file?*

A2. Yes, if the institution can readily print out from the compact disc (or a duplicate of the compact disc) its CRA Disclosure Statement for a consumer when the public file is requested. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the bank should provide the CRA Disclosure Statement in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by § ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

§ ____.43(c)–1: *What is an institution's ''main office''?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)–2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in § ____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in §§ ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____.44—Public Notice by Institutions

§ ____.44–1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

§ ____.45–1: *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled to for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

§ ____.45–2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Appendix A to Part ____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part ____—CRA Notice

Appendix B to Part____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: The address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at 12 CFR 4.5(a).

OCC-, FDIC-, and Board-supervised institutions: ''Officer in Charge of Supervision'' is the title of the responsible official at the appropriate Federal Reserve Bank.

Appendix A—Regional Offices of the Bureau of the Census

To obtain median family income levels of census tracts, MSAs, block numbering areas and statewide nonmetropolitan areas, contact the appropriate regional office of the Bureau of the Census as indicated below. The list shows the states covered by each regional office.

Atlanta
(404) 730–3833
Alabama, Florida, Georgia

Boston
(617) 424–0510
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Charlotte
(704) 344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia

Chicago
(312) 353–9747
Illinois, Indiana, Wisconsin

Dallas
(214) 655–3050
Louisiana, Mississippi, Texas

Denver
(303) 969–7750
Arizona, Colorado, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Detroit
(313) 259–1875
Michigan, Ohio, West Virginia

Kansas City
(913) 551–6711
Arkansas, Iowa, Kansas, Minnesota, Missouri, Oklahoma

Los Angeles
(818) 904–6339
Southern California, Hawaii

New York
(212) 264–4730
New York, New Jersey—selected counties

Philadelphia
(215) 656–7578
Delaware, District of Columbia, Maryland, New Jersey—selected counties, Pennsylvania

Seattle
(206) 553–5835
Alaska, Northern California, Idaho, Oregon, Washington

INDEX

Keyword	Q & A
Affiliate lending	§ ____.22(b)(1)–1
	§ ____.22(b)(2) & (3)–3
	§ ____.22(c)(1)–1
	§ ____.22(c)(2)(i)–1
	§ ____.22(c)(2)(ii)–1
	§ ____.41(a)–2
	§ ____.42(d)–1
	§ ____.43(b)(1)–1
Affiliates	§ ____.12(a)–1
	§ ____.27(c)–2
Affordable housing	§§ ____.12(h) & 563e.12(g)–1
	§§ ____.12(h) & 563e.12(g)–2
	§§ ____.12(h)(1) & 563e.12(g)(1)–1
	§ ____.42(b)(2)–3

INDEX—Continued

Keyword	Q & A
Alternative delivery systems	§ ____.24(d)–1
	§ ____.24(d)(3)–1
	§ ____.24(d)(3)–2
Applications, corporate	§ ____.29(a)–1
	§ ____.29(a)–2
	§ ____.29(b)–1
Assessment area	§ ____.22(b)(2) & (3)–2
	§ ____.22(b)(2) & (3)–3
	§ ____.22(b)(2) & (3)–4
	§ ____.26(a)(2)–1
	§ ____.41(a)–1
	§ ____.41(a)–2
	§ ____.41(a)–3
	§ ____.41(c)(1)–1
	§ ____.41(c)(1)–2
	§ ____.41(d)–1
	§ ____.41(e)(3)–1
	§ ____.41(e)(4)–1
	§ ____.41(e)(4)–2
Assessment area, benefit to	§§ ____.12(i) & 563e.12(h)–5
	§§ ____.12(i) & 563e.12(h)–6
	§ ____.25(e)–1
	§ ____.26(b)–2
Assets	§§ ____.12(t) & 563e.12(s)–1
	§§ ____.12(t) & 563e.12(s)–2
ATMs	§§ ____.12(f) & 563e.12(e)–1
	§ ____.24(d)–1
	§ ____.24(d)(3)–1
	§ ____.41(e)(3)–1
Borrower characteristics	§ ____.22(b)(2) & (3)–1
	§ ____.22(b)(2) & (3)–5
	§ ____.26(a)(3) & (4)–1
	§ ____.42(c)(1)(iv)–3
Branch	§§ ____.12(f) & 563e.12(e)–1
	§ ____.28(a)–1
	§ ____.41(e)(3)–1
Brokerage	§§ ____.12(m) & 563e.12(l)–2
CEBA credit card banks	§ ____.25(a)–1
Charitable contributions or activities	§§ ____.12(j) & 563e.12(i)–2
	§§ ____.12(s) & 563e.12(r)–4
	§§ ____.12(s) & 563e.12(r)–5
Child care services	§§ ____.12(h) & 563e.12(g)–1
Commercial loans	§ ____.12(u) & 563e.12(t)–2
	§ ____.42(a)–1
	§ ____.42(c)(2)–1
Commitments	§ ____.22(a)(2)–1
	§ ____.26(a)–4
	§ ____.29(a)–2
	§ ____.42(c)(2)–2
Community contact interviews	§ ____.21(b)(2)–2
Community development	§§ ____.12(h) & 563e.12(g)–1
	§§ ____.12(h) & 563e.12(g)–2
	§§ ____.12(h) & 563e.12(g)(3)–1
	§ ____.42(b)(2)–3
Community development activities	§ ____.21(a)–1
Community development loan	§§ ____.12(i) & 563e.12(h)–1
	§§ ____.12(i) & 563e.12(h)–2
	§§ ____.12(i) & 563e.12(h)–3
	§§ ____.12(i) & 563e.12(h)–4
	§§ ____.12(i) & 563e.12(h)–5
	§§ ____.12(i) & 563e.12(h)–6
	§§ ____.12(i) & 563e.12(h)–7
	§§ ____.12(s) & 563e.12(r)–6
	§§ ____.12(u) & 563e.12(t)–1
	§ ____.22(b)(4)–1
	§ ____.22(d)–3
	§ ____.23(b)–1
	§ ____.25(d)–1
	§ ____.26(a)–1
	§ ____.26(a)–3
	§ ____.26(b)–2

INDEX—Continued

Keyword	Q & A
	§ ____.42(b)(2)–1
	§ ____.42(b)(2)–2
	§ ____.42(b)(2)–3
Community development service	§§ ____.12(i) & 563e.12(h)–5
	§§ ____.12(i) & 563e.12(h)–7
	§§ ____.12(j) & 563e.12(i)–1
	§§ ____.12(j) & 563e.12(i)–2
	§§ ____.12(j) & 563e.12(i)–3
	§§ ____.12(s) & 563e.12(r)–7
	§ ____.23(b)–1
	§ ____.26(b)–2
	§ ____.42(c)(2)–1
Community development test	§ ____.25(f)–1
Community services	§§ ____.12(h) & 563e.12(g)–2
	§ ____.25(d)–1
Complexity	§ ____.22(b)(5)–1
	§ ____.23(e)–2
	§ ____.28–1
Consortia	§ ____.22(d)–2
	§ ____.26(a)–3
Consumer loan	§§ ____.12(k) & 563e.12(j)–1
	§§ ____.12(k) & 563e.12(j)–2
	§§ ____.12(k) & 563e.12(j)–3
	§ ____.22(a)(1)–2
	§ ____.42(c)(1)–1
	§ ____.42(c)(1)(iv)–1
	§ ____.42(c)(1)(iv)–2
	§§ ____.42(c)(1)(iv)–4
CRA disclosure statement	§ ____.43(b)(1)–2
Credit cards	§§ ____.12(i) & 563e.12(h)–3
	§§ ____.12(u) & 563e.12(t)–4
	§ ____.42(a)(2)–3
Data collection	§ ____.42–1
	§ ____.42–2
	§ ____.42–5
	§ ____.42–7
	§ ____.42(a)–1
	§ ____.42(a)–2
	§ ____.42(a)–4
	§ ____.42(a)–5
	§ ____.42(a)–8
	§ ____.42(a)–10
	§ ____.42(a)(2)–1
	§ ____.42(a)(2)–2
	§ ____.42(a)(2)–3
	§ ____.42(a)(3)–1
	§ ____.42(a)(4)–2
	§ ____.42(a)(4)–4
	§ ____.42(b)(1)–1
	§ ____.42(b)(3)–1
	§ ____.42(c)(1)–1
	§ ____.42(c)(1)(iv)–1
	§ ____.42(c)(1)(iv)–2
	§ ____.42(c)(1)(iv)–3
	§ ____.42(c)(2)–1
	§ ____.42(c)(2)–2
Data reporting	§ ____.42–1
	§ ____.42–3
	§ ____.42–4
	§ ____.42(a)–1
	§ ____.42(a)–5
	§ ____.42(a)–8
	§ ____.42(a)–9
	§ ____.42(a)–10
	§ ____.42(a)(2)–1
	§ ____.42(a)(4)–4
	§ ____.42(b)(1)–1
	§ ____.42(b)(2)–1
	§ ____.42(b)(2)–2
	§ ____.42(b)(2)–3
Debit cards	§ ____.42(d)(3)–2

INDEX—Continued

Keyword	Q & A
Economic development	§§ ____.12(h) & 563e.12(g)–2
Educational services	§§ ____.12(h) & 563e.12(g)–1
Employees' charitable activities	§§ ____.12(j) & 563e.12(i)–2
Employees' income	§ ____.42(c)(1)(iv)–2
Examination schedule	§ ____.45–1
	§ ____.45–2
Federal branch	§§ ____.12(t) & 563e.12(s)–2
Federal Home Loan Bank	§§ ____.12(s) & 563e.12(r)–3
Federal Reserve Bank membership reserves	§§ ____.12(s) & 563e.12(r)–3
Financial services, provision of	§§ ____.12(j) & 563e.12(i)–1
Fisheries	§ ____.42(a)–6
Flexibility	§ ____.22(b)(5)–1
Forestries	§ ____.42(a)–6
Geographic distribution	§ ____.22(b)(2) & (3)–1
	§ ____.22(b)(2) & (3)–2
	§ ____.22(b)(2) & (3)–3
	§ ____.22(b)(2) & (3)–4
	§ ____.26(a)(3) & (4)–1
Geography	§ ____.41(d)–1
Guaranteed loans	§ ____.22(a)(2)–4
Guarantor	§§ ____.42(c)(1)(iv)–4
Health services	§§ ____.12(h) & 563e.12(g)–1
High cost area	§§ ____.12(h) & 563e.12(g)–3
HMDA reporting	§§ ____.12(i) & 563e.12(h)–2
	§ ____.42(b)(3)–1
Home equity line of credit	§§ ____.12(k) & 563e.12(j)–2
	§ ____.42(a)–7
Home equity loan	§§ ____.12(k) & 563e.12(j)–1
Home mortgage lending	§§ ____.22(a)(1)–1
	§ ____.42(d)–1
Home mortgage loan	§§ ____.12(m) & 563e.12(1)–1
	§§ ____.12(m) & 563e.12(1)–2
	§ ____.23(b)–2
	§ ____.42(b)(2)–2
	§ ____.42(b)(3)–1
Illegal credit practices	§ ____.28(c)–1
Income	§ ____.42(c)(1)(iv)–1
	§ ____.42(c)(1)(iv)–2
	§ ____.42(c)(1)(iv)–3
Income level	§§ ____.12(n) & 563e.12(m)–1
Indirect investments	§ ____.23(a)–1
Individual development accounts (IDAs)	§ ____.24(d)–2
Innovativeness	§ ____.22(b)(5)–1
	§ ____.23(e)–2
	§ ____.28–1
Institutional capacity and constraints	§ ____.21(b)(4)–1
Internet	§ ____.43(c)–2
Intranet	§ ____.43(c)–2
Leases	§ ____.42(c)(2)–3
Lending activity	§ ____.22(b)(1)–1
Lending distribution	§ ____.26(a)(3) & (4)–1
Lending within assessment area	§ ____.22(b)(2) & (3)–3
	§ ____.26(a)(2)–1
	§ ____.26(a)(3) & (4)–1
Letters of credit	§ ____.22(a)(2)–1
	§ ____.26(a)–4
	§ ____.42(c)(2)–2
Limited purpose institution	§§ ____.12(o) & 563e.12(n)–1
	§§ ____.12(o) & 563e.12(n)–2
	§§ ____.12(o) & 563e.12(n)–3
	§ ____.42–7
Lines of credit	§ ____.42–3
	§ ____.42–4
Loan amount	§ ____.42(a)(2)–1
Loan application activity	§ ____.22(a)(2)–2
Loan location	§ ____.42(a)–10
	§ ____.42(a)(3)–1
Loan originations, multiple	§ ____.42(a)(2)–2
Loan production office (LPO)	§§ ____.12(f) & 563e.12(e)–2
Loans, outside-assessment area	§ ____.22(b)(2) & (3)–4

INDEX—Continued

Keyword	Q & A
Loan-to-deposit ratio	§ ____.26(a)(1)–1
	§ ____.26(a)(1)–2
	§ ____.26(a)(1)–3
Main office	§ ____.43(c)–1
Measurable goals	§ ____.27(f)(1)–1
MECAs	§ ____.22(a)(2)–3
Merging institutions	§ ____.42–5
Mortgage-backed securities	§§ ____.12(s) & 563e.12(r)–2
	§ ____.23(b)–2
Multi-purpose loan	§§ ____.12(k) & 563e.12(j)–3
	§ ____.42(a)–7
Municipal bonds	§§ ____.12(s) & 563e.12(r)–2
National fund	§ ____.25(e)–1
New Markets Venture Capital Company	§§ ____.12(h)(3) & 563e.12(g)(3)–1
Niche institution	§§ ____.12(o) & 563e.12(n)–3
Nonprofit organization	§§ ____.12(u) & 563e.12(t)–1
Past performance	§ ____.21(b)(5)–1
Performance context	§ ____.21(b)–1
	§ ____.21(b)(2)–1
	§ ____.21(b)(2)–2
	§ ____.21(b)(4)–1
	§ ____.21(b)(5)–1
	§ ____.21(b)(5)–2
Performance criteria	§ ____.22(b)–1
	§ ____.23(e)–1
	§ ____.23(e)–2
	§ ____.26(a)–1
	§ ____.26(a)–2
	§ ____.28–2
Performance evaluation	§ ____.43(a)(1)–3
Performance rating	§ ____.26(a)–2
	§ ____.26(a)–5
	§ ____.26(b)–1
	§ ____.28–1
	§ ____.28–2
	§ ____.28(a)–1
	§ ____.28(a)–2
	§ ____.28(a)–3
	Appendix A to Part ____–1
Political subdivision	§ ____.41(c)(1)–1
	§ ____.41(c)(1)–2
	§ ____.41(d)–1
Primary purpose	§§ ____.12(i) & 563e.12(h)–7
	§ ____.42(b)(2)–3
Public comment	§ ____.27(g)(2)–1
	§ ____.29(b)–1
	§ ____.29(b)–2
	§ ____.43(a)(1)–1
	§ ____.43(a)(1)–2
Public file	§ ____.43(a)(1)–2
	§ ____.43(a)(1)–3
	§ ____.43(b)(1)–1
	§ ____.43(b)(1)–2
	§ ____.43(c)–2
Public notice	§ ____.44–1
	Appendix B to Part ____–1
Qualified investment	§§ ____.12(i) & 563e.12(h)–5
	§§ ____.12(i) & 563e.12(h)–7
	§§ ____.12(s) & 563e.12(r)–1
	§§ ____.12(s) & 563e.12(r)–2
	§§ ____.12(s) & 563e.12(r)–3
	§§ ____.12(s) & 563e.12(r)–4
	§§ ____.12(s) & 563e.12(r)–5
	§§ ____.12(s) & 563e.12(r)–6

INDEX—Continued

Keyword	Q & A
	§§ ____.12(s) & 563e.12(r)–7
	§ ____.23(b)–1
	§ ____.23(b)–2
	§ ____.23(e)–1
	§ ____.23(e)–2
	§ ____.25(d)–1
	§ ____.26(a)–1
	§ ____.26(a)–5
	§ ____.26(b)–2
Qualitative factors	§ ____.21(a)–1
	§ ____.22(b)(4)–1
	§ ____.22(b)(5)–1
	§ ____.23(e)–1
	§ ____.23(e)–2
	§ ____.28–1
	§ ____.28–2
Ratings matrix	§ ____.28(a)–3
Refinancings	§ ____.42(a)–5
Regional area	§§ ____.12(i) & 563e.12(h)–6
Remote service facility (RSF)	§§ ____.12(f) & 563e.12(e)–1
Renewals	§ ____.42–4
	§ ____.42(a)–5
Responsiveness	§ ____.22(a)–1
	§ ____.23(e)–2
Retail banking services	§ ____.24(d)–1
Revenue	§ ____.42(a)(4)–1
	§ ____.42(a)(4)–2
	§ ____.42(a)(4)–3
	§ ____.42(a)(4)–4
Revitalize or stabilize	§§ ____.12(h) & 563e.12(g)–1
	§§ ____.12(h) & 563e.12(g)–2
	§§ ____.12(h)(4) & 563e.12(g)(4)–1
	§§ ____.12(i) & 563e.12(h)–4
SBIC or SBDC	§ ____.12(h)(3)____563e.12(g)(3)–1
Similarly situated lenders	§ ____.21(b)(5)–2
Small business loan	§§ ____.12(u) & 563e.12(t)–1
	§§ ____.12(u) & 563e.12(t)–2
	§§ ____.12(u) & 563e.12(t)–3
	§§ ____.12(u) & 563e.12(t)–4
	§ ____.42(a)–2
	§ ____.42(a)–3
	§ ____.42(a)–5
	§ ____.42(a)–8
	§ ____.42(a)(2)–1
	§ ____.42(a)(2)–3
	§ ____.42(a)(3)–1
	§ ____.42(a)(4)–1
	§ ____.42(a)(4)–2
	§ ____.42(a)(4)–4
	§ ____.42(b)(1)–1
	§ ____.42(b)(2)–2
	§ ____.42(c)(2)–1
Small farm loan	§ ____.42(a)–3
	§ ____.42(a)–4
	§ ____.42(a)–5
	§ ____.42(a)–6
	§ ____.42(a)–8
	§ ____.42(a)(2)–1
	§ ____.42(a)(4)–2
	§ ____.42(a)(4)–4
	§ ____.42(b)(1)–1
	§ ____.42(a)(2)–2
Small institution	§§ ____.12(t) & 563e.12(s)–1
	§§ ____.12(t) & 563e.12(s)–2
	§ ____.42–6
	§ ____.42–7

INDEX—Continued

Keyword	Q & A
Small institution performance standards	§ ____.26(a)–1
	§ ____.26(a)–2
	§ ____.26(a)–3
	§ ____.26(a)–4
	§ ____.26(a)–5
	§ ____.26(a)(3) & (4)–1
	§ ____.26(b)–1
	§ ____.26(b)–2
Social services	§§ ____.12(h) & 563e.12(g)–1
Software for data collection and reporting	§ ____.42–2
	§ ____.42–6
	§ ____.42(c)(2)–1
Special purpose insitution	§§ ____.11(c)(3) & 563e.11(c)(2)–1
	§§ ____.11(c)(3) & 563e.11(c)(2)–2
State branch	§§ ____.12(t) & 563e.12(s)–2
Strategic plan	§ ____.27(c)–1
	§ ____.27(c)–2
	§ ____.27(f)(1)–1
	§ ____.27(g)(2)–1
Subsidiary	§ ____.12(a)–1
Third party investments	§ ____.22(d)–1
	§ ____.22(d)–2
	§ ____.22(d)–3
	§ ____.25(d)–1
	§ ____.26(a)–3
Wholesale institution	§§ ____.12(o) & 563e.12(n)–2
	§§ ____.12(w) & 563e.12(v)–1
	§ ____.42–7

End of text of the Interagency Questions and Answers

Dated: July 5, 2001.

Joanne Giese,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans: Texas; the Houston/Galveston Nonattainment Area; Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX134–1–7501; FRL–7011–4]

Approval and Promulgation of Implementation Plans; Texas; the Houston/Galveston Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through parallel processing, the EPA is proposing to approve the Texas one hour ozone attainment demonstration State Implementation Plan (SIP) for the Houston/Galveston (HG) severe nonattainment area based on Texas' commitment to submit by October 1, 2001 a SIP revision that incorporates enforceable commitments to adopt and submit the remaining measures necessary to demonstrate attainment of the one hour standard; that incorporates recent legislation and its effects upon the proposed control strategy necessary to demonstrate attainment of the standard; that corrects and modifies the Post 1999 Rate of Progress (ROP) plans; that adequately demonstrates all Reasonably Available Control Measures (RACM) have been implemented in the HG area; and that modifies the attainment Motor Vehicle Emissions Budget (MVEB) to account for changes in the Heavy Duty Diesel vehicle emissions projection. In the alternative, if they fail to meet this commitment, EPA is proposing to disapprove the attainment demonstration for the HG area.

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

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Guy R. Donaldson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–7242, E-mail Address: Donaldson.Guy@epa.gov.

SUPPLEMENTARY INFORMATION: In proposing to approve the attainment demonstration SIP, the EPA also is proposing the following related actions:

- Approval of the following local measures relied on in the attainment demonstration: speed limit reduction, voluntary mobile emission programs (VMEP) and transportation control measures (TCM).
- Approval of the Post 1999 ROP plans for the time periods 2000–2002, 2003–2005 and 2006–2007.
- Approval of the MVEB contained in the attainment demonstration SIP and the Post 1999 ROP plans.
- Approval of the 15% ROP Plan (Conversion of conditional interim approval to a full approval).
- Approval of the State's enforceable commitment to perform a mid-course review and submit a SIP revision with recommended mid-course corrective actions, to the EPA by May 1, 2004.
- Approval of the State's enforceable commitment to revise the MVEB using the MOBILE6 on-road emissions model.
- Approval of revisions to the 1990 base year inventory.
- Approval of the HG area's SIP as meeting the reasonably available control measures (RACM) requirement.

Of the above proposed actions, the EPA is proposing to approve through parallel processing the State's enforceable commitments to adopt and submit the remaining necessary measures, the revised control strategy as impacted by recent state legislation, modifications and corrections to the ROP plans, the RACM analyses, and revisions to the projected on-road emissions from Heavy Duty Diesel engines, as submitted by the Governor in a letter dated June 15, 2001. This proposed action is based on the requirements of the Federal Clean Air Act (the Act or the CAA) related to ozone demonstrations.

If the State makes significant changes between the versions being parallel reviewed and the final adopted versions, other than those changes resulting from issues discussed in this proposed rulemaking, EPA will issue an additional proposed rulemaking prior to taking final action. If there are no significant changes to the parallel-processed versions and Texas submits the final versions by September 2001, the EPA will proceed with final rulemaking. Final full approval of the attainment demonstration SIP is contingent on final approval of the MVEBs, ROP plans, the items being parallel processed, and the rules and other measures relied upon to demonstrate attainment. Due to an existing consent decree, by October 15, 2001, EPA must propose a Federal Implementation Plan (FIP) if EPA has not fully approved the attainment demonstration SIP for the HG area.

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. Proposed Action
What Actions are We Proposing to Approve?
II. Background
A. Why Control Ozone?
B. How is Ozone Formed?
C. What are the Relevant Clean Air Act Requirements?
D. What are the Components of an Acceptable Attainment Demonstration?
III. Background of Texas' Attainment Demonstration Submission
A. What are the Contents of the State's Attainment Demonstration Submittals?
B. What Previous Actions has EPA Taken on the HG Attainment Demonstration Submittals?
IV. Evaluation of Attainment Demonstration SIP
A. Photochemical Modeling
B. Modeled Control Strategies
C. Modeling Results and Weight of Evidence
D. Additional Control Measures That Have Not Modeled
E. Summary of Control Measures
F. Enforceable Commitments
G. Attainment Motor Vehicle Emissions Budget
H. Reasonably Available Control Measures
I. Impacts of Texas Legislative Action
J. Impacts of Recent State Settlement of Litigation
V. Local Measures
A. Speed Limit Reductions
B. Voluntary Mobile Emission Program (VMEP)
C. Transportation Control Measures (TCMs)
VI. Post 1999 Rate of Progress Plans
A. Proposed Action
B. Calculation of Required Reductions and Summary of Plans
C. Post 1999 ROP MVEBs
VII. 15% Rate of Progress Plan
Proposed Action
VIII. Summary of Related Measures EPA Must Approve Before EPA can Fully Approve the HG Attainment Demonstration
IX. EPA Guidance
X. Administrative Requirements

I. Proposed Action

What Actions Are We Proposing to Approve?

Through parallel processing, we are proposing to approve the one-hour ozone attainment demonstration SIP for

the HG nonattainment area. This demonstration shows through photochemical modeling and other evidence that a combination of adopted measures, recent legislation, and commitments to adopt additional measures that the HG area will attain the one hour ozone standard by November 15, 2007, the latest date provided under the CAA.

As an integral part of the attainment demonstration we are proposing approval and adequacy of the associated MVEBs only until these emission budgets have been revised pursuant to the State's commitments to use MOBILE6 and to adopt additional measures necessary for attainment and we have found the revised budgets adequate for the purposes of transportation conformity.

Before approving an attainment demonstration SIP, we must approve all of the control measures relied on in the demonstration. The majority of the control measures relied on in the attainment demonstration are being approved in other **Federal Register** documents. We are proposing to approve in today's action, certain measures relied upon in the attainment demonstration and which were submitted December 20, 2000: The Speed Limit Reductions, the VMEP ,and the TCMs. We are also proposing approval of the following SIP submissions: (1) 15% ROP Plan, (2) the Post 1999 ROP Plans and their associated contingency measures; (3) a demonstration that all RACM have been adopted for the HG nonattainment area; and (4) revisions to the 1990 Base Year Inventory. Revisions to the Post 1999 ROP plans and the RACM analysis are being parallel processed.

We cannot finalize the proposed approval of the attainment demonstration SIP and its associated attainment MVEB, unless and until, we have fully approved all of the control measures relied upon in the State's attainment demonstration SIP for the HG area. A description of all of these measures that must be finally approved by EPA before any final approval of the attainment demonstration SIP and its associated MVEBs is in section VIII.

In addition, we believe that for the HG area to be successful in attaining the one-hour ozone standard, the State must be committed to certain future actions relating to adopting additional measures and to future evaluations of the inputs to the plan. Therefore, we are proposing to approve the following State commitments:

- The State's enforceable commitment to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.
- The State's enforceable commitment to perform new mobile source modeling for the HG area, using MOBILE6, our on-road mobile emissions factor computer model, within 24 months of the model's official release; that if a transportation conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 official release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.
- An enforceable commitment to adopt rules that achieve at least the additional 56 tons/day of NO_X emission reductions that are needed for the area to show attainment of the one-hour ozone standard and identified potential measures that could achieve the reductions without requiring additional limits on highway construction.*
- An enforceable commitment to adopt measures to achieve 25% of the 56 tons/day needed additional NO_X reductions and submit these adopted measures to EPA as a SIP revision by December 2002.*
- An enforceable commitment to adopt measures for the remaining needed additional NO_X reductions and submit these adopted measures to EPA as a SIP revision by May 1, 2004.*
- An enforceable commitment that the rules needed for the additional NO_X reductions will be adopted as expeditiously as practicable and the compliance dates will be expeditious.*
- An enforceable commitment to concurrently revise the MVEBs and submit them to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions.

In a letter dated June 15, 2001, the Governor of Texas submitted several items for parallel processing. These items are: The enforceable commitments noted above with asterisks; the recent legislative changes with their impacts on and revisions to the proposed control strategy for the HG area; the corrections and modifications to the Post 1999 ROP plans; a demonstration that all RACM have been adopted for the HG nonattainment area; and a modification to the attainment demonstration and MVEB to revise the emission projection for Heavy Duty Diesel vehicles. Parallel processing means that EPA proposes action on a state rule before it becomes final under state law. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

In summary, we cannot finalize action on the attainment demonstration SIP and its associated MVEBs unless and until the Governor submits the items we are parallel processing, including the finally adopted enforceable commitments, the finally adopted control strategy as revised by the recent legislation, the corrections to the Post 1999 ROP Plans, the RACM demonstration and the revisions to the attainment MVEBs. The State has begun its public comment process on these items. Public hearings are scheduled for June 13, 14 and 15, and July 2, 2001. Submission is anticipated in September 2001, but not later than October 1, 2001.

If the EPA cannot fully approve all of the control measures and commitments relied upon in the attainment demonstration, and the items proposed for parallel processing, EPA cannot fully approve the attainment demonstration SIP for the HG area. Under an existing consent decree, EPA must propose a Federal Implementation Plan (FIP) by October 15, 2001, if EPA has not fully approved an attainment demonstration SIP for the HG area by that day.

II. Background

A. Why Control Ozone?

Ozone is a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can worsen bronchitis, asthma and reduce lung capacity.

The Act requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, we promulgated the one hour (0.12 parts per million (ppm)) ground-level ozone standard to guard against the health effects discussed above. 44 FR 8202 (Feb. 8, 1979)

The ozone problem in the HG area is one of the most serious in the country.

In 2000, the one hour ozone standard was exceeded 44 times in the HG area, more than anywhere else in the country. The area's peak one hour reading in 2000 was 225 parts per billion (ppb), almost twice the one hour NAAQS. This was the highest value recorded in the country.

B. How Is Ozone Formed?

Ground-level ozone is not emitted directly from a smoke stack or tail pipe. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

VOC emissions are produced by a wide variety of sources, including stationary and mobile sources. Significant stationary sources of VOC include industrial solvent usage, various coating operations, industrial and utility combustion units, petroleum and oil storage and marketing operations, chemical manufacturing operations, personal solvent usage, etc. Significant mobile sources of VOC include on-road vehicle usage and off-road vehicle and engine usage, such as farm machinery, aircraft, locomotives, and motorized lawn care and garden implements.

NO_X emissions are produced primarily through combustion processes, including industrial and utility boiler use, process heaters and furnaces, and on-road and off-road mobile sources.

C. What Are the Relevant Clean Air Act Requirements?

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (i.e., the highest of the fourth highest one hour daily maximum monitored ozone levels in a given three-year period with complete monitoring date). Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1 hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The HG ozone nonattainment area was classified as severe-17 (56 FR 56694, November 6, 1991). As such, it has until November 15, 2007 to attain the standard. The HG ozone nonattainment area is defined (40 CFR 81.314 and 81.326) to contain Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller Counties in Texas.

The specific requirements of the Act for severe ozone nonattainment areas are found in part D, section 182(d). Section 172 in part D provides the general requirements for nonattainment plans. Section 172(c)(6) in part D of the Act and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the SIP to provide for implementation of all RACM as expeditiously as practicable and for attainment of the NAAQS. Section 182(b)(1)(A) requires the State to submit for the moderate and above nonattainment areas, a 15% ROP Plan. Section 182(c)(2)(B) requires the State to submit for the serious and above nonattainment areas, a plan that will result in emissions reductions from the baseline emissions equal to at least 3 percent of the baseline emissions each year averaged over each consecutive 3-year period, from November 15, 1996, through the attainment date. Section 182(c)(2)(A) requires the State to provide for the serious and above nonattainment areas, an attainment demonstration based on photochemical modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective. EPA's ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) provides the interpretive basis for EPA's rulemakings under the nonattainment plan provisions of the Act (General Preamble).

D. What Are the Components of an Acceptable Attainment Demonstration?

In general, an attainment demonstration SIP includes a photochemical modeling analysis and other evidence showing how an area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment.

In our December 16, 1999, proposed approval and proposed disapproval on one of the State's previously submitted attainment demonstrations for the HG area, we listed six elements that must be addressed for one hour ozone attainment plans to be approvable. Five of these elements apply to the HG area [1] and are listed below. For a more detailed discussion see our December 16, 1999, **Federal Register** document.

(1) CAA measures and measures relied on in the attainment demonstration. This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification, such as the ROP plans that EPA is proposing to take action on today. This also includes measures that may not be required for the area classification but that the State relied upon to demonstrate attainment. A listing of the control measures that have been relied upon in the HG attainment demonstration upon which we are acting can be found in section IV.E. A discussion of the Act's requirements that apply to the HG area as a severe area can be found in section VIII. Finally, a list of items that must be finally approved before we can fully approve the HG attainment demonstration SIP can be found in section VIII.

(2) Motor vehicle emissions budgets. Motor vehicle emissions budgets which are consistent with attainment. A description of the MVEBs can be found at section IV.G.

(3) Tier 2/Sulfur program benefits. As part of factoring in these benefits in the attainment demonstration, the State must include an enforceable commitment to revise the attainment MVEB with MOBILE6, our on-road emissions factor model, within two years of its official release, and it is necessary for the State to include an enforceable commitment stating that if a transportation conformity analysis is to be performed between 12 months and

[1] The sixth element pertains to the NO_X SIP call which does not apply to Texas.

24 months after the official release of MOBILE6, transportation conformity will not be determined until the State submits an MVEB which is developed using MOBILE6 and which we find adequate. A discussion of the State's enforceable commitments can be found in section IV.F.

(4) Commitment to a mid-course review. Because of the uncertainty in long-term projections, EPA believes a viable attainment demonstration that relies on weight of evidence (as Texas does for the HG area) should contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. A discussion of the State's enforceable commitment can be found in section IV.F.

(5) Additional measures to further reduce emissions to support the attainment test. At the time of the December 1999 proposal, EPA had proposed that several State plans including Texas's plan for the HG area, did not include sufficient control measures to achieve the necessary emission reductions to demonstrate attainment. Therefore, it was necessary for those States to commit to adopting additional measures. As discussed in section IV.F., Texas still has not found sufficient control measures to demonstrate attainment and will continue to rely on enforceable commitments for a small portion of the needed reductions.

III. Background of Texas' Attainment Demonstration Submission

A. What Are the Contents of the State's Attainment Demonstration Submittals?

The December 20, 2000, SIP revision and the State's proposed May 30, 2001, SIP revision are actually the culmination of several years of efforts to develop a comprehensive plan to attain the one hour ozone standard in the HG ozone nonattainment area.

In a March 2, 1995 policy memorandum, we provided that States could submit their attainment demonstration and ROP plans in phases. Phase I was to insure that progress was maintained while a complete plan was developed. The Phase I plan was to include a set of specific control measures to obtain major reductions in ozone precursors. For Texas, these were to include:

- Rules to insure that Reasonably Available Control Technology (RACT) was implemented on major sources of volatile organic compounds,
- A demonstration that baseline emissions would be reduced by 9% during the time period 1997–1999 (Post 1996 ROP plan),
- An enforceable commitment to submit an attainment demonstration by mid-1997, and
- A commitment to participate in a consultative process to address Regional transport of ozone and precursors.

In a letter dated January 10, 1996, Texas submitted a plan intended to demonstrate the State had met the criteria for a Phase I submission under the March 2, 1995 policy memorandum.

In August 1996, Texas submitted corrections to its Post 1996 ROP plan and 15 Percent ROP plan primarily to address changes to the inspection and maintenance program.

A December 29, 1997, EPA guidance memorandum provided for additional time for submittal of an attainment demonstration from mid-1997 until April, 1998. The December 29, 1997, memorandum explained that additional time was warranted because the consultative process to address transport, which had become known as the ozone transport assessment group (OTAG), had been delayed by 9 months; therefore, it was appropriate to delay the submittal of the attainment demonstrations accordingly. Subsequently, the State submitted a SIP revision on May 19, 1998, containing the following:

(1) Evidence that all measures and regulations required for the nonattainment area by subpart 2 of title I of the Act to control ozone and its precursors had been adopted and implemented or were on an expeditious schedule to be adopted and implemented.

(2) A list of potential control measures to meet Post 1999 ROP requirements and attain the 1 hour NAAQS.

(3) An enforceable commitment to submit a plan on or before the end of 2000 containing (a) target calculations for post 1999 ROP milestones up to the attainment date and (b) adopted regulations needed to achieve the post 1999 ROP requirements up to the attainment date and to attain the 1 hour NAAQS.

(4) An enforceable commitment and schedule to implement the control programs and regulations in a timely manner to meet ROP and achieve attainment.

(5) Evidence of a public hearing on the State submittal, and

(6) Photochemical modeling showing that between 65% and 85% NO_X emission reductions are necessary for the area to attain the standard. The State did not model a specific control strategy that had been shown to demonstrate attainment.

On November 15, 1999, Texas submitted a SIP revision intended to correct deficiencies in the May 19, 1998, SIP revision. The November 1999 SIP revision included the following:

(1) A modeled control strategy and other evidence, and

(2) An associated MVEB.

In a letter dated April 25, 2000, Texas submitted a SIP revision that included the following:

(1) An enforceable commitment to revise the MVEB based on MOBILE6 within 2 years of the release of MOBILE6. If a transportation conformity analysis is to be performed between 12–24 months after the release of MOBILE6, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which the EPA finds adequate.

(2) An enforceable commitment to recalculate and resubmit an MVEB that includes the effects (if any) of the measures that are ultimately adopted should any of these measures pertain to motor vehicles.

(3) An enforceable commitment to perform a mid-course review.

(4) A list of measures that could be used to achieve the EPA-identified additional emission reductions needed to demonstrate attainment, including an indication that none of these measures would restrict highway construction.

On December 20, 2000, the State submitted a SIP revision, concerning the ozone attainment demonstration, containing:

(1) A photochemical modeling demonstration and additional weight-of-evidence analyses supporting the photochemical modeling demonstration,

(2) An accompanying control strategy, comprised of:

a. Regulations and initiatives in the HG area (and their documentation); and

b. Additional regional rules and orders (and their documentation), relied upon for demonstrating attainment in the HG area.

(3) A demonstration that the plan will achieve VOC reductions from the baseline emissions equal to 3% reduction per year averaged over each 3-year time period for the time period November 15, 1999 to November 15, 2007. As allowed under the Act, NO_X reductions were substituted for VOC reductions since the modeling shows ozone reduction in the HG area is more sensitive to NO_X controls.

(4) 2007 MVEBs associated with the attainment demonstration and 2002, 2005 and 2007 MVEBs associated with the Post 1999 ROP plan.

(5) Emissions growth estimates and a 2007 forecast emissions inventory.

The December 20, 2000, submission acknowledges that the HG area needs additional controls to attain the ozone standard by November 15, 2007. In the December 2000 SIP revision, Texas identifies the tons per year of additional NO_X reductions needed to attain. The Texas Natural Resources Commission (TNRCC) has begun its rulemaking procedures, including a public comment period and hearing, proposing to adopt an enforceable commitment to adopt the additional measures needed to meet the shortfall. As part of the commitment, the State identifies the to-be-considered control measures, their estimated range of projected emissions reductions, and the dates for submission to the EPA of the adopted control measures. The reductions represented by the enforceable commitment represent only a small percentage (approximately 6%) of the total emission reductions that have been shown are needed for the area to attain. On May 30, 2001, the Commission gave TNRCC permission to take formal comment on the following items: Commitments to adopt the remaining additional measures and to submit them as SIP revisions by specified dates, impacts upon the proposed control strategy as a result of recent legislation, a RACM analysis, corrections to the Post 1999 ROP plans, and a correction to the attainment plan to revise the projection of on-road diesel emissions and associated MVEB revision. A further discussion of these items that we are parallel processing can be found in later sections.

B. What Previous Actions Has EPA Taken on the HG Attainment Demonstration Submittals?

This proposed action incorporates the preamble to EPA's December 16, 1999 action, in which we proposed conditional approval, and alternatively, disapproval of portions of the May 19, 1998, SIP revision that pertained to the attainment demonstration and the attainment MVEBs, as supplemented by the November 15, 1999, SIP revision (64 FR 70548). EPA does not plan to take final action on that proposed action since the State submitted, in December 2000, revised modeling and analyses, Post 1999 ROP plans and MVEBs, and adopted measures relied upon in the attainment demonstration. As noted above, additional revisions are currently being processed by the State and EPA through parallel processing. To the extent that comments received on the December 1999 proposed action are applicable to this proposed rulemaking, however, EPA will respond to those comments in its final rulemaking action.

IV. Evaluation of Attainment Demonstration SIP

A. Photochemical Modeling

What Modeling Approach was used in the State's Attainment Demonstration?

Model Selection: Texas used the Comprehensive Air Quality Model with Extensions (CAMx) photochemical grid model (which is based on well-established treatments of advection, diffusion, deposition, and chemistry similar to the Urban Airshed photochemical grid model (i.e., UAM)) to conduct the SIP attainment demonstration modeling for the HG ozone nonattainment area. The TNRCC's modeling activities were performed as outlined in the modeling protocols, according to EPA's ''Guideline for Regulatory Application of the Urban Airshed Model'' (Guideline). For a full description of the State's modeling analysis, see the TSD for this proposed action.

Episode Selection:

EPA's Guideline sets forth a recommended procedure for selecting ozone exceedance episodes appropriate for conducting a modeling demonstration. This procedure, in part, considers wind rose analyses based upon the four morning hours of 0700 to 1000 standard time. However, the HG area is situated along the Upper Texas Coastal Region, and during the summer months when the highest ozone exceedances occur, this region frequently experiences a unique land-sea breeze meteorological regime. This land-sea breeze meteorological regime is characterized by morning land breezes which transition into afternoon sea breezes. There appears to be a strong correlation between the land-sea breeze meteorological regime and high ozone events. Thus, to assure that the land-sea breeze meteorological regime is well-represented in the episode selection process, TNRCC modified EPA's recommended procedure by including wind rose analyses based upon the four afternoon hours of 1300 to 1600 standard time. Both morning and afternoon wind rose analyses were considered in defining the meteorological patterns associated with high ozone events. EPA proposes to accept this modified procedure for the HG nonattainment area's modeling since it more adequately addresses the unique source-receptor relationship associated with the land-sea breeze meteorological regime.

TNRCC identified a total of seven episodes with high ozone and robust data sets as candidates for modeling. Three of the seven candidate episodes occurred during the intensive data collection period (from July 18-August 28, 1993) of the Coastal Oxidants Assessment for South Texas (COAST) study. Two other of the seven episodes (September 1–2 and September 8–11, 1993) occurred after the intensive data collection period; however, some of the COAST monitors were still operational so that more robust meteorological, precursor, and ozone data were still available. To include a broader base for the episode selection, TNRCC also identified two candidate episodes that occurred in October 1992 to supplement the COAST episodes. Initially, Texas selected four episodes to model: August 18–20, 1993, September 8–11, 1993, October 24–25, 1992, and September 1–2, 1993. The September 1–2 episode was chosen primarily to examine transport into the Beaumont/Port Arthur area.

The base case modeling for both the August 18–20, 1993, and the October 24–25, 1992, episodes did not perform within EPA's recommended performance standards. See the TSD for further details on the performance of the various episodes. In addition, the September 1–2 episode, while performing well in the Beaumont/Port Arthur portion of the domain, did not perform well in the HG area. These episodes, therefore could not be used as a basis for control strategy testing. The September 8–11, 1993, episode, however, performed within EPA's recommended performance ranges and could be used for control strategy testing. The September 8–11 episode includes both calm and land sea breeze meteorological conditions which are typical for high ozone events in the HG area. We propose to accept the use of the September 8–11, 1993, episode for the attainment demonstration modeling purposes for the HG area because this episode features wind patterns representative of typical high ozone occurrences in the HG area, high monitored ambient ozone level concentrations, and is a multi-day episode.

Modeling Domain: Texas has chosen a large modeling domain (i.e., SuperCOAST) to ensure capture of the influence of inter-urban transport, the important horizontal and vertical circulation patterns as well as the movement of ozone and ozone precursors. The State combined both the HG and Beaumont/Port Arthur ozone nonattainment areas into one nested modeling domain to avoid overlapping wind fields since the two areas are generally influenced by the same meso-scale meteorology. This domain, which is larger than the minimum recommended, encompasses all the

major emission sources and all surface meteorological/air quality monitors in both areas and, therefore EPA proposes to accept the domain since it is more representative of the HG area's conditions.

What Input Data Systems and Analyses Were Used as Part of the Modeling?

The following input data systems and analyses were used by the State:

Emissions: TNRCC developed two major types of modeling emission inventories, one type representing the actual emissions that occurred during the chosen specific episode period, and another type representing the projected emissions expected to occur at the attainment date for the HG area (i.e., 2007). The episode-specific modeling emissions, termed the ''base case,'' were used to evaluate the model's reliability in replicating the ozone exceedances that occurred during the chosen episode. The 2007 projected modeling emissions, termed the ''future base case,'' were used to estimate the overall level of reductions in VOC and NO_X needed to achieve attainment. For a more complete description of how these base case and future base case inventories were developed, see the TSD.

Meteorology: TNRCC developed the meteorological inputs to CAMx using the System Application International Mesoscale Model (SAIMM), which is a prognostic mesoscale meteorological model with four dimensional data assimilation (4DDA). EPA is proposing to accept TNRCC's use of SAIMM because it replicates the land-sea breeze and inter-urban area transport features which appear to be typical of conditions associated with ozone exceedances along the Texas Gulf coast more closely than diagnostic models.

Chemistry: Atmospheric chemistry within the modeling grid system was simulated using the Carbon Bond-Version IV model developed by the EPA.

Boundary and Initial Conditions: EPA's Guidelines recommend the use of the ROM photochemical model on a regional basis for developing boundary conditions. TNRCC in collaboration with ENVIRON conducted a regional modeling application to determine boundary and initial conditions for the COAST modeling domain. This regional modeling domain covered a rather large area of the southeastern United States, extending from San Angelo, Texas on the west to the Georgia-Alabama border on the east, and from south of Brownsville, Texas on the south to the Oklahoma-Kansas border on the north. EPA considers this modeling framework used by TNRCC for the development of boundary and initial conditions to be superior to ROM, since it encompasses many improvements in model formulation over ROM. Using the ozone transport (OTAG) model performance criteria as a gauge for the technical acceptability of this Texas regional modeling, EPA proposes to accept the TNRCC/ENVIRON regional modeling application as producing more accurate results upon which to derive initial and boundary conditions for the COAST modeling episode.

Modeling Performance

How did the State Validate the Modeling Performance?

Texas performed diagnostic and sensitivity analyses, and graphical and statistical performance measures to evaluate the performance of the modeling. These performance measures are to be used in conjunction with one another.

The model performance evaluation based upon diagnostic and sensitivity analyses consisted of testing the response of modeled ozone to changes in the various model inputs (i.e., meteorology, emission inventory, and initial and boundary conditions). The model performance evaluation based upon graphical measures consisted of comparing time series of monitored and modeled ozone and ozone precursor concentrations, and comparing modeled ozone concentration contours with monitored ozone data. The model performance evaluation based upon statistical measures consisted of comparing the modeled versus monitored ozone ''Unpaired Peak Accuracy'', ''Normalized Bias'', and ''Gross Error'' with the suggested limits in the EPA Guideline.

a. Diagnostic and Sensitivity Analyses

Texas conducted the following diagnostic/sensitivity analyses for the September 8–11, 1993 episode: Zero-out Anthropogenic emissions; Zero-out Initial and Boundary Conditions; Lowered Boundary Conditions (i.e. derived from Gulf of Mexico Air Quality Study (GMAQS)); and Half Wind Speed. These diagnostic tests did not reveal any flaws in the CAMx model formulation. Both physical and chemical responses demonstrated by the model are consistent with our underlying understanding of how the atmosphere behaves.

b. Graphical Measures

The graphical measures consisted of ozone contour plots and times series analyses. The ozone contour plots generally show the model to be simulating a notable amount of ozone in both magnitude and geographical extent. With the exception of September 9, the simulated ozone contour plots depict the area of ozone greater than 124ppb to be somewhat at odds geographically with the monitors recording the higher ozone concentrations. On all four days, the simulated ozone contour plots show the magnitude of high ozone to be somewhat less than the monitored ozone concentration levels. Thus, the model under-predicts the ozone concentration levels. The fact that the model does not precisely predict the position of the cloud of ozone geographically, does not, by itself, mean the model is not acceptable for control strategy development. The graphical performance is only one factor and was considered in conjunction with other measures of model performance.

c. Statistical Measures

Table 1 shows the statistical performance of the model for this episode. As indicated, the statistical parameters are within the EPA recommended limits for all days of the episode.

TABLE 1.—CAMX BASE CASE MODEL PERFORMANCE STATISTICS FOR SEPTEMBER 8–11, 1993

Episode date	Normalized bias (+ – 5–15%)	Normalized gross error (+ – 30–35%)	Unpaired peak accuracy (+ – 15–20%)	Domain-wide peak ozone (ppb)	
				Simulated	Observed
9/8/93	1.8	22.6	– 12.7	187	214
9/9/93	2.6	29.1	– 10.4	175	195
9/10/93	– 13	26.1	6.2	172	162
9/11/93	– 2.9	20.4	– 3.9	182	189

Summary of Model Performance

Results of the statistical measures are within the EPA recommended ranges and the spatial and temporal patterns are generally representative of the observed patterns in the ambient data. It is EPA's technical position that taken together, the diagnostics, sensitivity, statistical and graphical performances of the model indicate the base case model performance is acceptable for use in this attainment demonstration.

B. Modeled Control Strategies

What Emission Control Strategies Were Included in the Modeling Demonstration?

The HG attainment demonstration SIP is directed at reductions of NO_X since the modeling shows reductions of NO_X will be most effective in bringing the area into attainment of the standard. The modeling includes Federal measures, State and local initiatives. The attainment demonstration modeling also relies on Regional measures applied in east and central Texas.

Federal Measures: The State included the following Federal Measures in the December 2000 revision's Future Year Base Case.

1. On-road mobile sources:
   —Tier 2 vehicle emission standards and federal low sulfur gasoline.
   —National Low Emitting Vehicle standards.
   —Heavy-duty diesel standards.

We believe that the projected growth rates and emissions reductions from the sources subject to the above federal measures were calculated correctly by the State.

2. Off-road mobile sources:
   —Lawn and garden equipment standards.
   —Tier II/III heavy-duty diesel standards.
   —Locomotive standards.
   —Compression ignition standards for vehicles and equipment.
   —Spark ignition standards for vehicles and equipment.
   —Recreational marine standards.

We believe that the State correctly projected the growth rates and emissions reductions for sources subject to these federal measures.

State Measures for the HG Area: The State included the following State Measures as local (HG) area controls in the Future Year control case in the December 2000 revision.

—Phase II reformulated gasoline (RFG) in the HG area.
—Electric generating and industrial point sources—HG area. The State is proposing a revision to this measure which we are parallel processing. The effects of this proposed revision upon the Future Year control case are discussed further in section IV.J. and the TSD.
—An expanded vehicle I/M program—HG area.
—Low emission diesel fuel—East Texas (including the HG area) for off-road and statewide for on-road.
—Heavy-duty diesel equipment operating restrictions—five counties. (Excludes Liberty, Chambers and Waller).

As required by the recently enacted Senate Bill 5, TNRCC will not be relying upon this measure in the final adopted control strategy, i.e., the Future Year control case. In its place, the State will substitute some of the projected emission reductions from the newly-established legislative incentive program, the Texas Emissions Reduction Program (TERP), that provides 130 million dollars/year for incentive programs to reduce emissions. We are not proposing action upon the Heavy-duty Diesel Operating Restrictions rule because a portion of the reductions from the TERP measure will be replacing it in the final control strategy. We believe that the incentive program can achieve more reductions than the projected reductions lost by the replacement of this control measure. The incentive program and its technical impacts upon the proposed control strategy are further discussed in section IV.I.

—Commercial lawn equipment operating restrictions—five counties. (Excludes Liberty, Chambers and Waller).
—Batch processes, bakeries, and offset lithographic printers—HG area.
—VMEP measures—HG area.

State's Regional measures: The State included the following Regional measures in the Future Year Base Case.

—Agreed orders with Alcoa, Inc. (formerly Aluminum Company of America) for its Milam Facility, and the Eastman Chemical Company, Texas operations, for its facility near Longview, Texas.
—Electric generating facilities in central and eastern Texas.
—Low Reid Vapor Pressure Gasoline in central and eastern Texas.
—Stage I gasoline vapor recovery at gas stations in central and eastern Texas.

We have reviewed the State's Regional and Local Measures and believe the State's projection of expected emissions reductions for these measures are correct. Further, we believe the State has correctly factored growth in emissions due to population and economic growth.

As discussed briefly above, since the model runs were performed, two measures, the Heavy-duty Diesel Equipment Operating restrictions and the rules for utilities are being changed. See sections IV.I. and IV.J. respectively for discussion of why EPA believes this will not adversely affect the modeling results.

With the exception of the VMEP measures and the Heavy-duty Diesel Equipment Operating restrictions, we have already published or shortly will be publishing actions on all of the above listed State control measures in various separate **Federal Register** documents. We are proposing action today on the acceptability of the VMEP program.

C. Modeling Results and Weight of Evidence

What Were the Modeling Results?

The future control case modeling was conducted using the projected 2007 emissions inventory coupled with emissions controls listed above. Table 2 summarizes modeled peak ozone for the future control case compared to the 1993 base case.

TABLE 2.—FUTURE CONTROL CASE PEAK MODELED OZONE IN THE HG 8–COUNTY AREA

Episode day	Peak modeled ozone (ppb)	
	1993 modeled	Final control case
September 8	187	141.0
September 9	175	128.6
September 10	172	134.7
September 11	182	130.7

There are two changes to the emission control programs that are not included in the modeling performed to achieve the results above. We do not believe these changes will affect the modeled results in a way to increase the modeled ozone. The substitution of a portion of the emission reductions from the new statutorily mandated TERP measure for the modeled heavy-duty diesel equipment operating restrictions along with the change in the NO_X point source measures, are not expected to increase the modeled ozone restrictions. A more detailed discussion of why these changes are not expected to increase modeled ozone can be found in the TSD and in sections IV.I and IV.J.

Does the Weight of Evidence Support the Attainment Demonstration?

While the 2007 post-control modeling does not demonstrate attainment of the

standard, it does project dramatic improvements in air quality. In Table 2, the reductions in peak ozone are documented. Texas has also documented dramatic improvements in hours of ozone exceedances and the area of ozone exceedances.

Texas did not conclude that the modeled control strategy demonstrated the area would attain the standard. Instead, using a weight of evidence analysis consistent with the EPA guidance entitled, ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' November, 1999), they determined the amount of additional emission reductions that would be necessary for the area to attain the standard. The State calculated that an additional 96 tons/day of NO_X emission reductions will be necessary for the HG area to attain the standard. The State used a quadratic extrapolation of model results to make this estimation. This method is an improvement over the linear extrapolation example provided in the 1999 guidance. The replacement of the Heavy-duty Diesel Equipment Operating Restriction measure by a portion of the TERP reductions and the change to the NO_X point source rule will not change the results of the calculation. The EPA proposes to accept the calculated 96 tons/day of additional NO_X emission reductions as the amount of additional emission reductions, beyond those modeled, necessary for the HG area to attain. For a full description of this calculation technique, see the TSD.

D. Additional Control Measures That Have Not Been Modeled

What Measures Have Been Adopted That Were not Included in the State's Modeling?

The following measures were adopted by the State in order to address the 96 tons/day additional NO_X emission reductions that are shown by the modeling and the weight of evidence analysis to be needed to demonstrate attainment.

—Accelerated purchase of Tier 2/3 non-road diesel equipment. As required by the recent Senate Bill 5, this control measure will not be part of the final adopted control strategy for the HG area. In addition, on June 13, 2001, the U.S. District Court for the Western District of Texas ruled that this measure is preempted by the Clean Air Act (*Engine Manufacturers Association* v. *Robert J. Huston,* NO. A 00 CA 316 SS). In its place, a portion of the projected emission reductions from the newly established legislative incentive program, the TERP, will be substituted. EPA believes the projected emission reductions from the new incentive program can achieve more than the reductions that were projected to be achieved by this replaced control measure and the Heavy-duty Diesel Equipment Operating Restrictions measure. The incentive program is further discussed in section IV.I.

—Agreed Orders for airport ground support equipment electrification with Continental Airlines, Southwest Airlines, and the City of Houston.

—Gasoline heavy equipment engines—Statewide.

—Speed Limit Reduction—HG area.

—Energy Efficiency—reductions in the HG area based on DOE standards.

—Vehicle Idling Restrictions—HG area.

—Gas-fired water heaters, small boilers, and process heaters—statewide.

—TCMs

We have proposed to approve most of the above measures in separate **Federal Register** actions. We are proposing to approve the Speed Limit Reduction and TCMs in this proposal action, and have already approved the statewide rules for water heaters, small boilers, and process heaters. We are not proposing action upon the accelerated purchase of Tier 2/3 non-road diesel equipment rule since this measure will not be relied upon in the State's final attainment demonstration. A portion of the projected reductions from the new TERP measure will be relied upon instead. See the TSD and section VIII for a complete summary of EPA actions. We will supplement the TSD as each proposed and final action are published.

E. Summary of Control Measures

What are the Projected NO_X Reductions From the Modeled and Non-modeled Control Measures?

Table 3 provides the projected NO_X reductions for the 2007 attainment year resulting from the State rules and the local initiatives that were included in the final model run and the measures that were not modeled.

TABLE 3.—NO_X REDUCTION PROJECTIONS (TONS PER DAY)

2007 projected emissions	1083.0
Modeled measures:	
Major point sources	*586.0
Inspection/Maintenance	36.2
Low emission diesel fuel	5.7
HD diesel oper. restrictn (est)	6.7
Small, Spark operating restriction (est)	4.6
VMEP measures	23.0
Total modeled measures	663.2
Measures not modeled:	
Energy Eff	3.6
Acc purchase Tier II/III	12.2
Speed Limit Reductions	12.3
Airport GSE	5.1
Heavy equipment gas engines	2.8
Vehicle Idling Restrictions	0.5
Gas-fired water heaters, etc	0.5
Stationary Diesel Engine Cont	1.0
TCMs	1.1
Total NO_X reductions not modeled	39.0
Total Equivalent NO_X from VOC reduct	1.1
Total NO_X Reductions	710.1

*This number is adjusted in the May 30, 2001 State proposal to account for the proposed changes to the rules for control of electric utility generators.

Has the State Adopted Measures That Achieve Sufficient Emission Reductions To Achieve Attainment?

No, as discussed previously, using a weight of evidence analysis, the State has calculated that an additional 96 tons/day of NO_X emission reductions are needed beyond those that were modeled to demonstrate attainment. The State had adopted additional measures that were projected to achieve 40.1 tons/day of NO_X emission reductions. The legislature, however, repealed the TNRCC's authority to implement the Heavy-duty Diesel Operating Restrictions and Accelerated Purchase of Tier 2/3 non-road diesel equipment measures. This leaves a need to adopt additional measures that will achieve an additional 68.1 tons/day of NO_X emission reductions. Texas has submitted to EPA, for parallel processing, the impact of the TERP measure upon the shortfall. A portion of the TERP measure's projected emission reductions will be substituted for the Tier 2/3 non-road diesel equipment measure. The State has calculated that reliance upon this portion of the TERP measure will achieve 12.2 tons/day. EPA is proposing to agree with this projected emission reduction. This leaves an additional 55.9 tons/day of NO_X emission reductions needed to be addressed by the State. The State has submitted, through parallel processing, proposed enforceable commitments to address this shortfall of 55.9 tons/day. This shortfall is approximately 6% of

the overall emission reductions from the 1993 baseline shown to be necessary for attainment in the HG area.

F. Enforceable Commitments

What Is an Enforceable Commitment?

An enforceable commitment is a written commitment by the State to adopt plan revisions and submit them to EPA as SIP revisions by specific timeframes. In the case of the HG area, there are two types of enforceable commitments. First, the State is committing to continue to analyze the latest technical information and to incorporate it into planned revisions. There are specific provisions for future on-road modeling to incorporate the latest mobile emissions estimation models and to insure that the mobile emissions budgets used for conformity analyses are based on the most current information. Second, the State is committing to achieve additional emission reductions needed for attainment.

To be enforceable, commitments must be part of the SIP and, therefore, the State must have given notice and taken comment on the commitment and held a public hearing. The commitments must be specific as to the state agency's future plans for adoption of specified control measures. The dates for implementation of, or compliance with, the future to-be-adopted specified control measures must be included in the commitments and be as expeditious as practicable. A commitment is enforceable because EPA can find that the State failed to implement the SIP if the State does not follow through with the commitment. Further, the public can seek enforcement of the obligations under section 304(a) of the CAA.

Why Does EPA Believe That Enforceable Commitments To Achieve Additional Reductions Are Appropriate?

Texas has not been able to identify and therefore adopt additional programs that will achieve sufficient emission reductions to achieve attainment. They have reviewed measures that have been included in other State Implementation Plans and have been unable to identify additional RACM, except for one source category—stationary diesel engines. TNRCC is proposing to adopt a rule to control this category, and EPA is acting on the proposed rule through parallel processing. EPA is proposing to agree that the State has adopted all RACM for the HG area. For a more complete discussion of the State's RACM analysis and EPA's evaluation, see section IV.H and the TSD. Although the State has adopted or will have adopted all RACM, these adopted RACM measures are not enough to show attainment, leaving 6% of the reductions identified as necessary to show attainment not being controlled. Therefore, EPA is proposing to allow the State to rely upon enforceable commitments for this small portion of the attainment demonstration.

There are innovative programs and technologies that have the potential to achieve the needed emission reductions. These programs are listed in Chapter 7 of the HG SIP, which Texas has submitted to us for parallel processing. Through parallel processing, we are proposing to approve Chapter 7 with its enforceable commitments as part of the HG attainment demonstration SIP. (We are also proposing to approve the other Chapters and Appendices of the HG SIP, and through parallel processing, the proposed revisions to these other Chapters and Appendices.) The programs listed by the State require further development of new technology or new innovative programs. EPA is agreeing that, with additional time, Texas should be able to adopt enough of the additional identified innovative programs and new technologies so that these programs and technologies will achieve the needed 55.9 tons/day (or 6%) NO_X emission reductions. Texas is committing to submit them as SIP revisions with all of the measures adopted no later than the mid-course review submission in May 2004.

What Are the State's Enforceable Commitments?

In the proposed SIP parallel reviewed for this proposal action, the Commission commits to adopt measures necessary to achieve at least 56 tons/day of NO_X emission reductions in the HG area. Potential measures are identified that could achieve the reductions without requiring additional limits on highway construction. Further, they indicate that none of the to be adopted measures require additional limits on highway construction.

Should the mid-course review conducted in 2003 show that more or fewer NO_X emissions reductions are needed for attainment by November 15, 2007, they commit to submit the revised calculation to the EPA for approval. They state that the SIP revision submitted in May 2004 (committed-to in the mid-course review enforceable commitment submitted April 2000) will account for those additional reductions above and beyond the 56 tons/day commitment if the mid-course review shows they are necessary for attainment. They further commit to submit adopted measures as a SIP revision, with any resulting revision to the MVEB, to the EPA no later than December 31, 2002, that achieve at least 25% of the 56 tons/day NO_X emission reductions. They also commit to submit adopted measures to achieve at least the 56 tons/day of NO_X emission reductions, as SIP revisions as expeditiously as practicable but no later than May 2004. They commit that the implementation dates and compliance deadlines for the adopted measures will be as expeditious as practicable. They further note that they commit to adopting any additional measures necessary to achieve the reductions determined by any EPA-approved shortfall calculation and submitting the adopted rules with an attainment demonstration SIP no later than May 1, 2004.

In addition, as discussed earlier, the State has already submitted the following commitments to insure the plan continues to be based on the latest information.

- An enforceable commitment to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004;
- An enforceable commitment to submit new mobile source modeling for the HG area, using MOBILE6, our on-road mobile emissions factor computer model, within 24 months of the model's official release; and that if a transportation conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 official release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.
- Texas has also submitted for parallel processing, a commitment to concurrently revise the MVEB and submit the revised MVEB to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions.

In the State's Chapter 7, the State outlines in detail its plans to conduct the mid-course review, including new modeling analyses and scientific studies. Texas plans for the modeling analyses to include new episodes from the Texas 2000 intensive ozone study. Based on these studies and modeling analyses, the State may refine in the future the control strategy being proposed for approval by EPA today. The State acknowledges in Chapter 7 that any changes to the plan or methodology will have to be submitted to EPA for review and approval. Texas intends to approach the mid-course

review in two planned phases : One phase by December 2002 and the second phase is the full mid-course review that will be submitted to EPA as a SIP revision in May 2004.

What Measures Are Being Considered To Address the Shortfall?

Texas is considering a number of measures to address the 56 ton/day NO_X shortfall. The programs listed by the State in Chapter 7 require further development of new technology or new innovative programs and are described below. The State has cited ranges of potential reductions which are included here, and which give us reasonable assurance that the State can meet its commitment to submit adopted measures filling the shortfall. We are not, however, approving the particular amount of reductions presented by Texas for any individual measure. We will review the State's projected reductions from individual measures when they are fully adopted by the State and submitted as a SIP revision. Through the rulemaking procedures, we will propose action upon the acceptability of the projected reductions. Gasoline Additives: As of January 1, 1995, all gasoline marketed in the United States must contain an EPA-approved additive package with a detergent. Detergent in gasoline is critical to keep the fuel nozzles of injectors clear of varnish, gums and other deposits that can clog them. A clogged injector will result in incomplete combustion, resulting in increased tailpipe emissions. Research and development of gasoline additives is ongoing. The State represents, based on an additive manufacturer's claims for their additive package, an emission reduction potential for gasoline detergent additives in addition to what is federally required for detergent additives. The State believes that a gasoline additive program has potential to reduce emissions by 11–20 tons/day.

Diesel Emulsion: This is an emerging fuel technology that relies on a water in fuel mixture to lower NO_X and particulate matter (PM) emissions. The water tends to lower flame temperatures thus reducing the resulting NO_X emissions. The key to a successful diesel emulsion is an effective additive to act as an emulsifying agent to suspend the water in the diesel. At least two companies are marketing a diesel emulsion technology with NO_X emission reduction claims of 20–30%. Currently both the Port of Houston and the City of Houston are testing the fuel to determine its operational feasibility. Texas has projected that a widespread use of emulsified diesel could result in 4–10 tons/day of emission reductions.

Energy Efficiency: Texas has projected a potential 4–11 tons/day of emission reductions from measures to improve energy efficiency. Senate Bill 5 establishes State-wide energy efficient building codes and also sets energy efficiency targets for State and local governments. These programs will clearly reduce growth in demand and therefore will result in NO_X emission reductions. It is not clear, however, the amount and location of the emission reductions that will occur. We will work with TNRCC to quantify the expected reductions in demand growth and the anticipated amount of emission reductions.

Economic Incentives, Fleet Controls, Incentives for cleaner vehicles and/or vehicle fleets and funding for transit programs: 17–25 tons/day. To calculate the potential range of emission reductions, Texas has primarily looked to the diesel incentive program recently established by the Texas legislature (TERP). This program can reasonably be expected to provide 40 million dollars/year to the HG area for reducing emissions from existing diesel equipment. The program is based on similar California programs and has the potential to achieve substantial reductions. Based on the California experience, we believe that emission reductions should be obtainable at an average cost on the order of $5000/ton. A preliminary estimate is that 32–40 tons/day of emission reductions could potentially be achieved in the HG area. However, a portion of the reductions attributable to this program for the HG area will be used in the final control strategy to replace the projected reductions from the Heavy-duty Diesel Equipment Operating restrictions and the accelerated purchase of Tier 2/Tier 3 non-road diesel equipment measures. These two replaced programs were projected to achieve the equivalent of 18.9 tons/day of emission reductions, therefore leaving the potential of 13–21 tons/day of emission reductions from the diesel subsidy program to be used to help address the remaining shortfall.

The legislature has also appropriated money to provide incentive for consumers to buy cars that meet the most stringent Tier II standards. The technology exists for manufacturers to produce vehicles which meet the cleaner ''incentive emissions standards,'' but EPA cannot predict at this time the availability of the cleaner vehicles produced by auto manufacturers during the 2002 to 2003 timeframe, regardless of incentives offered for individual purchase. The State believes that all of the programs, other than TERP, have potential to reduce emissions by 4 tons/day.

Diesel NO_X reduction systems: There are several diesel NO_X emission reductions technologies that are being tested by the Port of Houston and the City of Houston. These technologies are devices that can be added to on-road and off-road equipment to reduce NO_X emissions. Texas has estimated the potential of these devices to reduce emissions by 6–15 tons/day.

Additional Gasoline Sulfur Controls: Texas has estimated that reducing gasoline sulfur levels to 15ppm would result in another 1–2 tons/day of emission reduction beyond that achieved by Tier II in the HG area.

Fuel Cells: The State has projected that 1–5 tons/day of emission reductions can be achieved with increased use of fuel cells. Fuel cells are an emerging technology that have the potential to provide reliable electrical power with much less pollution and virtually no NO_X emissions. Currently, two projects are underway in the HG area to test the feasibility of fuel cells. First, electrical ground support equipment at Bush Intercontinental Airport is going to be charged using fuel cells. Second, a portion of ships' power while docked will be provided by a fuel cell. These projects will demonstrate the potential of fuel cells to provide reliable power at the point of use.

Innovative Idea measures: The following programs together are presented by Texas as having potential to achieve emission reductions of 12–33 tons/day: marine loading operations, episodic emission controls, reductions in vehicle miles traveled (VMT), pricing policies to reduce VMT, reductions at ports and airports, use of new technology and the internet to further reduce emissions.

It is worth noting that marine loading operations and episodic emissions are primarily emitters of VOC emissions. This attainment demonstration SIP for the HG area has been almost exclusively designed to reduce NO_X emissions, although 25% reduction of VOC emissions are shown to be needed for attainment. The attainment demonstration SIP has projected VOC reductions of at least 25%. Episodic high concentrations of VOC emissions, particularly in the heavily industrialized ship channel area, may contribute to the observed ''spike'' ozone peaks in the HG area. TNRCC is committed to performing further scientific analyses.

Does EPA Propose To Accept These Enforceable Commitments To Cover the Shortfall in the SIP?

The SIP submitted for parallel processing contains an enforceable commitment for the State to adopt, by May 2004, measures to achieve at least 56 tons/day of NO_X emission reductions. It identifies potential measures that could achieve the reductions without requiring additional limits on highway construction. The proposed SIP acknowledges that none of the measures could require additional limits on highway construction. They also commit to implement the adopted rules as expeditiously as practicable, but no later than the beginning of the ozone season in the HG area—January 2007. Further, the State commits to adopt, and submit to the EPA as a SIP revision, by December 2002, measures to achieve at least 25% of the 56 tons/day NO_X reductions. They commit to adopt, and submit to the EPA as a SIP revision, no later than May 2004, the remaining rules needed to obtain the rest of the shortfall. We believe these submission and implementation schedules are as expeditious as practicable. Further, we believe the State has identified sufficient innovative programs and new technologies such that it is reasonable to believe that, in the aggregate, the projected estimated emission reductions from these new programs and technologies can be achieved and will fill the shortfall. In addition, the State has made an enforceable commitment to concurrently revise the MVEB and submit the revised MVEB to EPA as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions. Therefore, through parallel processing, we propose approval of the State's commitments.

G. Attainment Motor Vehicle Emissions Budget

What Is a Motor Vehicle Emissions Budget (MVEB) and Why Is It Important?

The MVEB is the level of total allowable on-road emissions established by the measures in a control strategy implementation plan or maintenance plan. In this case, the MVEB establishes the maximum level of on-road emissions that can be produced in 2007, when considered with emissions from all other sources, which demonstrates attainment of the NAAQS. It is important because the MVEB is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act.

What Are the MVEBs Established by the Attainment Plan and Proposed for Approval by This Action?

The MVEBs established by this plan and that the EPA is proposing to approve through parallel processing are contained in Table 4.

TABLE 4.—2007 ATTAINMENT YEAR MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2007
VOC	79.51
NO_X	156.60

We find the MVEBs consistent with all pertinent SIP requirements, and the MVEBs are proposed for approval as limited by the discussion below. In addition, we are taking comment in this action on the adequacy of the MVEBs for transportation conformity purposes pursuant to the criteria in 40 CFR 93.118(e)(4) as part of our proposed action on the SIP rather than using the web posting process because we are moving forward on this SIP in a quick manner as described in *Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations* dated November 3, 1999.

What Is the State's Commitment To Revise the Motor Vehicle Emissions Budgets With MOBILE6?

All States whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after we release MOBILE6. The State committed in its April 2000 submission to performing new mobile source modeling for the HG area, using MOBILE6, within 24 months of the model's official release. If transportation conformity analysis is to be performed between 12 months and 24 months after the official release of MOBILE6, transportation conformity will not be determined until the State submits an MVEB which is developed using MOBILE6 and which we find adequate. Texas also commits in its Chapter 7, as proposed to be revised, that it will concurrently revise the MVEB if the adoption of any shortfall measures affects the MVEB and submit the revision to EPA as a revision to the attainment SIP.

What Is the Applicable Budget To Use for Conformity Analysis?

We propose to approve the MVEBs in Table 4, pursuant to the State's commitments relating to MOBILE6 and the shortfall measures, only until revised motor vehicle emissions budgets are submitted and we have found them adequate for transportation conformity purposes. In other words, the budgets that are part of this attainment demonstration will apply for transportation conformity purposes only until there are new, adequate budgets consistent with the State's commitments to revise the budgets. The revised budgets will apply for transportation conformity purposes as soon as we find them adequate since our approval of the current budgets will terminate at that time.

We are proposing to limit the duration of our approval in this manner because we are only proposing to approve the attainment demonstration and its budgets because the State has committed to revise them after we release MOBILE6, after the State adopts measures that affect motor vehicle emissions pursuant to their enforceable commitments, and after the State conducts its mid-course review. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are proposing to approve for conformity purposes now.

If future changes to the budgets raise issues about the sufficiency of the attainment demonstration, we will work with the State. If the revised budgets show that motor vehicle emissions are lower than the budgets we approve, a reassessment of the attainment demonstration's analysis will be necessary.

This action does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the budget.

We can find the attainment MVEBs adequate for transportation conformity purposes and approvable, as limited above, because the budgets will not interfere with the area's ability to adopt additional measures to attain. Because the additional measures do not involve additional limits on highway construction, allowing new transportation investments to proceed consistent with the budgets will not prevent the area from achieving the additional reductions necessary to reach attainment.

H. Reasonably Available Control Measures

What Action Are We Proposing?

Through parallel processing, we are proposing to approve Texas'

demonstration that all Reasonably Available Control Measures have been or will be adopted in the HG area. The proposed analysis was submitted in a letter dated June 15, 2001, for us to parallel process. We believe Texas has shown that all reasonable measures that are RACM for the HG area have been or will be adopted. A full description of our evaluation of TNRCC's proposed analysis is contained in the TSD to this document. It is worth noting that through this analysis, Texas identified one measure, control of emissions from diesel fired generators, as being an additional RACM for the HG area. TNRCC has proposed a rule to control this source category and requested parallel processing. EPA will parallel process action on this rule in a separate rulemaking. If EPA cannot fully approve this diesel generator rule, we cannot fully approve the HG attainment demonstration SIP because it would not show that all RACM was being implemented in the area.

What Is the Reasonably Available Control Measure Requirement?

Section 172(c)(1) of the Act requires SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and for attainment of the standard. We have previously provided guidance interpreting the RACM requirements of 172(c)(1) in the General Preamble. See 57 FR 13498, 13560 (April 16, 1992). In the General Preamble, we indicated our interpretation of section 172(c)(1), under the 1990 amendments, as imposing a duty on States to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the particular nonattainment area. We also retained our pre-1990 interpretation of the RACM provisions that where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, we would not consider it reasonable to require implementation of such measures. We indicated that States could reject certain RACM measures as not reasonably available for various reasons related to local conditions. A State could include area-specific reasons for rejecting a measure as RACM, such as the rejected measure would not advance the attainment date, or technological and economic feasibility in the area.

We also issued a recent memorandum reaffirming our position on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. A copy can be obtained from *www.epa.gov/ttn/oarpg/t1pgm.html.* In this memorandum, we state that in order to determine whether a state has adopted all RACM necessary for attainment and as expeditiously as practicable, the state will need to provide a justification as to why measures within the arena of potential reasonable measures have not been adopted. The justification would need to support that a measure was not reasonably available for that area and could be based on technological or economic grounds.

How Did Texas Perform Its RACM Analysis?

Texas has based its analysis primarily on EPA's document ''Control Measures for Serious and Severe Ozone Nonattainment Areas'' issued November 1999. This document has a summary of the control measures that have been adopted in other areas of the country. Using this document as a guide, Texas was able to determine that measures as stringent or more stringent than other areas of the country are being implemented in the HG area for NO_X control. Texas used a modeling analysis in conjunction with the list of control measures in the EPA document to determine that additional VOC controls are not cost-effective in reducing ozone in the specific HG area because of the large number of small sources, difficulties in enforcement, and the large amount of VOC reductions needed to achieve a change in ozone concentrations. They also would not advance the attainment deadline.

I. Impacts of Texas Legislative Action

Numerous legislative changes occurred during Texas' 77th legislative session that impact the SIP that will be submitted by the State. As discussed earlier, Texas Senate Bill 5 creates an incentive program for purchase of low emission vehicles and establishes an energy efficiency program. The bill requires TNRCC to withdraw the control measures for the Heavy-duty Diesel Operating restrictions and the accelerated purchase of Tier ⅔ non-road diesel equipment,[2] and replace these with the incentive program (TERP). The TSD documents in detail the potential emission reductions of the incentive program. Based on the experience with similar programs in California, EPA is proposing that this new Texas program can achieve sufficient reductions to replace the two measures and also contribute to reducing the shortfall. Further, model sensitivity runs indicate that use of an incentive program, rather than the heavy duty diesel operating restrictions, will not increase the modeled shortfall. In fact, it may have positive impact.

House Bill 2912 also requires changes to the SIP. This bill limits TNRCC's authority to control fuel content. In anticipation of this legislation, the State proposed amendments to the low emission diesel rule on May 10, 2001. They have submitted this proposal, along with a request for parallel processing to EPA, for inclusion in the attainment demonstration. We have proposed to approve the rule and amendments in a separate action. These changes will not have an impact on the projected emission reductions from this measure nor on the peak modeled ozone concentrations and the gap methodology and the calculated 56 tons/day of NO_X emission reductions needed to show attainment because Texas had not previously included the benefits of requiring this rule in the western portion of the State in its modeling analysis.

House Bill 2912 also includes permit requirements for sources not previously required to obtain permits. The projected emission reductions from this measure are being used to replace the revised emission reductions projected from the NO_X point source measure. EPA discusses in the TSD how the emission reductions are projected and why, combined with the revised NO_X point source measure, there is no expected impact on the peak modeled ozone concentrations, the gap methodology and the calculated 56 tons/day of NO_X emission reductions needed to show attainment.

Texas House Bill 2134 creates the Texas Low-income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. This program establishes a method for repair of high emitting vehicles or the retirement and replacement of those vehicles. It is anticipated that this legislation will have a neutral or slightly beneficial impact toward emission reductions. When the State implements the legislation, they will have to fully document the effects of the legislation. If the reductions are less than those currently relied upon from the scrappage program (included as a

[2] As also stated previously, the District Court for the Western District of Texas recently ruled that these two rules are preempted by the Clean Air Act. This ruling has no impact on the attainment demonstration because of the provisions of Senate Bill 5.

voluntary measure in the attainment demonstration), an additional measure will need to be submitted to account for the difference.

Further discussion of the projected emission reductions from the recent legislation and the effects upon the modeling and the shortfall methodology are discussed in the TSD.

J. Impacts of Recent State Settlement of Litigation

What Is the Basis for the Settlement of the Lawsuit?

A group of refinery, petrochemical and utility companies challenged a number of the State rules being relied on in the attainment demonstration in State court. In particular, they challenged the rules for control of industrial NO_X emissions. The TNRCC and EPA recognize that there are several factors contributing to the severity of the HG area's ozone problem. One is routine ozone formation such as that seen in other cities. Another is the HG area's unique land/sea breeze interaction. A characteristic of the HG area is ''spike'' ozone events where ozone rapidly builds up in the atmosphere. Meteorology, particularly the area's land/sea breeze interaction, may play a role in producing ''spike'' events.

The litigants, however, expressed their belief that this ''spike'' phenomenon is caused by episodic releases of highly reactive VOCs and that this phenomenon might play a role in determining ozone design values and control strategies. TNRCC in its Chapter 7 says that the sudden introduction of significant quantities of reactive hydrocarbons (or chlorine) could theoretically trigger dramatic increases in ozone concentrations. Thus, the TNRCC agreed in a settlement to perform a scientific study within one year. The study, as discussed in Chapter 7, would (1) develop a robust statistical definition of ozone ''spikes''; (2) evaluate ''spike'' events from the 1998–2000 design value period; and (3) analyze ''spike'' events to determine their probable causes and locations within the modeling domain. The Commission states in Chapter 7 that they will perform analyses to see if ''spikes'' were at all influenced by upset releases. They will also review the inventory to see if it reflects or can be revised to reflect the varying temporal characteristics of many sources. Modeling of an August–September 2000 episode will be conducted as well. Planned enhancements to this modeling would be the incorporation of an upgrade to the model's chemical mechanism to account for chlorine chemistry, the TNRCC's determination of the role of chlorine in ozone formation, the role of ''spikes'', and possibly the use of very high resolution sub-domains. In Chapter 7 of the HG SIP, as proposed to be revised, the Commission commits to developing an enforceable plan to minimize releases of reactive hydrocarbon emissions and the emissions of chlorine. They further state that to the extent that the science (the study and modeling discussed above) confirms the benefit from this strategy, then it is the intent of the Commission to implement such a VOC-control strategy which will first offset NO_X reductions required for industrial sources from the existing strategy's required 90 percent to the 80 percent level. They also state that they would implement such a revised VOC-control program through a SIP revision. The Commission further states that in its discretion, it may allocate any additional benefit beyond 80 percent to other existing SIP strategies and/or to the point source NO_X control strategy. Any scientific determinations, supporting technical information, revised rules, revised control strategy, and revised attainment demonstration must be submitted to the EPA for approval as an attainment demonstration SIP revision.

Another element of the agreement is for the TNRCC to revise the reduction requirement for utility generators in the HG area from 93% to 90%. Relaxing this requirement is compensated by the NO_X reductions that will be achieved by the recent legislation requiring permitting of grandfathered sources. (The sources primarily affected by the revised measure are pump and compressor station engines.) Texas in Chapter 7, as proposed to be revised, states that it will perform a refined analysis modeling both the new emission reductions and the increases in NO_X from the power plant emissions in its planned first phase of the mid-course review (that planned modeling would also include the other enhancements discussed above). By June 2002, the Commission will assess the results of the modeling conducted. Depending upon the assessment, the Commission plans to begin rulemaking activities, if indicated, by June 2002 and finish in November 2002. We are proposing to agree with Texas that the effect of the reduced amount of NO_X reductions from power plants should be small and will be offset by the reductions at the currently un-permitted facilities. Further discussion of the projected emission reductions from the proposed revisions for electric utility generators and the effects upon the modeling and the shortfall methodology are discussed in the TSD.

V. Local Measures

What Are the Local Initiatives and Are They Approvable?

The State submitted in the December 2000 SIP revision, three local initiatives; speed limit reductions, a voluntary mobile emissions program in the eight county area, and transportation control measures.

A. Speed Limit Reductions

The Texas Department of Transportation (TxDOT) revised regulations relating to speed limits to allow TNRCC to submit a request to change speed limits for environmental reasons when justified. Please see adopted rules, 25 TexReg 5686, June 9, 2000. TxDOT, using this authority, will lower posted speed limits currently above 55 mph to 55 mph in the eight county area beginning May 1, 2002. The reduced speed limits will apply year-round beginning May 2002. Traveling at slower speeds will reduce the emissions of NO_X and improve air quality. In estimating the benefits of this measure, TNRCC did not assume that all cars would comply with the new speed limits but instead assumed a similar level of noncompliance would continue at the lower speed limits as occurs presently. The State estimates a reduction of 12.33 tons/day of NO_X emissions and 1.76 tons/day of VOC emissions from this measure. We propose approval of the speed limit reductions control measure and associated emission reductions.

B. Voluntary Mobile Emissions Program (VMEP)

What Is EPA's VMEP?

Voluntary mobile source strategies that attempt to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition constitute the VMEP. EPA believes that the Act allows SIP credit for new approaches to reducing mobile source emissions, where supported by enforceable commitments to monitor and assess implementation and backfill any emissions reductions shortfall in a timely fashion. This flexible approach is consistent with the Clean Air Act section 110. Economic incentive provisions are also available in sections 182 and 108 of the Act. Credits generated through VMEP can be counted toward attainment and maintenance of the NAAQS. Due to the innovative nature of this program, up to

3% of the total future year emissions reductions required to attain the appropriate NAAQS, may be claimed under the VMEP policy.

What Qualifies for SIP Credit?

The basic framework for ensuring SIP credit for VMEPs is spelled out in guidance that came out under a memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, entitled ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs).'' Generally, to obtain credit for a VMEP, a State submits a SIP that:

(1) Identifies and describes a VMEP;

(2) Contains projections of emission reductions attributable to the program, along with any relevant technical support documentation;

(3) Commits to evaluation and reporting on program implementation and results; and

(4) Commits to the timely remedy of any credit shortfall should the VMEP not achieve the anticipated emission reductions.

More specifically, the guidance suggests the following key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. In addition, VMEPs must be consistent with attainment of the standard and with the ROP requirements and not interfere with other Clean Air Act requirements.

What Did the State Submit?

The State submitted program descriptions that projected emission reductions attributable to each specific program as part of the HG attainment demonstration submitted December 20, 2000. The State commits to evaluating each program to validate estimated credits. Table 5 lists the programs and projected credits.

TABLE 5.—VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED

Program type	NO_X benefits (tons per day)
Scrappage Program	0.39
Smoking Vehicle Program	0.04
Public Fleet Measures	1.02
Highway Demonstration Projects	0.84
Private Fleet Measures	3.21
Non-road Demonstration	2.5
Locomotive Controls	2.0
Marine Measures	4.8
Commute Solutions	1.8
Transtar Expansion	0.0
Clean Air Action/Cool Cities/ Other	0.03
Signal Light Timing	0–0.5
Smart Growth	0.3
Local County Emission Reduction Plan	1.5
AERCO Pilot Project	6.0
Total Benefits (tpd)	23

The State's goal is 23 tons/day of NO_X benefit from the VMEP program. Since overall, the HG area needs to reduce emissions by 768 tons/day from uncontrolled 2007 levels, this is within the 3% criteria in our guidance. The State has committed to evaluating and reporting on the program implementation and results and to timely remedy any credit shortfall.

Do the VMEPs Meet the Requirements for Approval?

A detailed analysis of all the VMEP measures can be found in the TSD for this document. For each creditable VMEP, the measure was found to be quantifiable. The reductions are surplus by not being substitutes for mandatory, required emission reductions. The commitment to monitor, assess and timely remedy any shortfall from implementation of the measures will be enforceable against the State. The reductions will continue at least for as long as the time period in which they are used by this SIP demonstration, so they are considered permanent. Each measure is adequately supported by personnel and program resources for implementation.

What Action Is EPA Taking on the VMEP?

The HG area's ozone SIP VMEP meets the criteria for credit in the SIP. The State has shown that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. We propose to approve the VMEP portion of the Texas SIP.

C. Transportation Control Measures (TCMs)

The State has included a variety of TCMs in the December 2000 SIP as a control strategy for attainment of the ozone NAAQS. The specific TCMs have been described in detail in appendix I of the SIP, and they will be incorporated by reference in the Code of Federal Regulations in the final approval action. Detailed information is necessary for those TCMs used as emissions reduction measures in the SIP to ensure that they are specific and enforceable as required by the Act and reflected in our policy. The TCMs' description in the SIP includes identification of each project, location, length of each project (if applicable), a brief project description, implementation date, and emissions reductions for both VOC and NO_X.

The TCMs identified through this process and included in the SIP are contained and funded in the metropolitan transportation plan (MTP) and transportation improvement program (TIP) to ensure funding for implementation.

We propose approval of the TCMs.

VI. Post 1999 Rate Of Progress Plan

A. Proposed Action

What Action Are We Proposing To Take?

We are proposing approval of the Post 1999 ROP plans, submitted by the Governor on December 20, 2000. These plans were supplemented with proposed revisions to the SIP submitted for parallel processing in a letter dated June 15, 2001. We are proposing to parallel process approval of these revisions to the plans.

These plans demonstrate that ozone forming emissions will be reduced from the baseline emissions by 9% in each of the periods 2000–2002 and 2003–2005 and by 6% during the time period of 2006–2007. We are also proposing to approve the MVEBs associated with these plans and revisions thereto by parallel process approval. We are also proposing to approve the changes to the 1990 base year emissions inventory for the HG nonattainment area.

These Post 1999 ROP plans build upon the 15% ROP plan that was to cover the time period 1990–1996 and the Post 1996 ROP Plan that covered the time period 1997–1999. The 15% ROP plan was given conditional interim approval November 10, 1998, 63 FR 62943. In this action, the 15% plan is being proposed for full approval (see section VII.). The Post 1996 ROP plan was approved on April 25, 2001, 66 FR 20778.

B. Calculation of Required Reductions and Summary of Plans

What Are the Changes to the 1990 Base Year Inventory?

The 1990 base year inventory was originally approved November 8, 1994 (59 FR 55586). The State revised the VOC inventory on August 8, 1996.

These changes were approved November 10, 1998 (63 FR 62943). The State revised the 1990 base year VOC inventory again in the December 20, 2000 SIP revision. The December 20, 2000, SIP revision also contains the State's first revisions to the 1990 base year NO_X emissions inventory. The changes resulted from data gathered for the 1993 and 1996 periodic inventories. Analysis of the changes in the periodic inventories was backcast to the 1990 inventory for consistency since the 1990 inventory remains the ROP beginning point. We have reviewed the inventory revisions and they have been developed in accordance with our guidance on emission inventory preparation. Thus, we are proposing approval of the December 20, 2000, revisions to the 1990 base year inventory.

How Do We Calculate the Needed VOC and NO_X Emissions Reductions?

Calculating the needed emission reductions is a multi-step process that is described in detail in the TSD for this proposed action. In summary, the State (1) estimates the baseline emissions in 1990; (2) adjusts the baseline emissions to factor out emission reductions from pre-1990 federal motor vehicle control programs and Reid vapor pressure controls because the Act does not allow States to take credit for these reductions; (3) estimates the target level of emissions in the milestone years; and (4) estimates the anticipated growth in emissions during each period and calculates the needed emission reductions.

How Do the Plans Achieve the Required Reductions?

Tables 6 and 7 summarize the ROP plans submitted by Texas.

TABLE 6.—VOC RATE OF PROGRESS

Milestone Year	2002	2005	2007
Target Level	696.25	694.81	693.84
Projected emissions after controls	670.99	644.93	629.68
Measures	Pulp and Paper I/M Small engine Tier I RFG NLEV HDDV.	Small Engine Tier I I/M Tier I/II NLEV HDDV.	Small Engine Marine Engine Tier I/II NLEV HDDV

TABLE 7.—NO_X RATE OF PROGRESS

Milestone Year	2002	2005	2007
Target Level	1127.08	1011.33	935.67
Projected emission after controls	1116.06	695.05	542.0
Measures	Tier I NLEV RFG I/M Small Engine. HDDV Standards.	Tier I/II I/M HDDV Standards NO_X Point source controls.	Tier I/II HDDV Standards NO_X Point source controls

Do the Plans Achieve the Rate of Progress Goals?

Tables 6 and 7 show that the projected emissions after controls are less than the target level in each of the milestone years. In the 2002 ROP milestone year, Texas is able to meet the ROP requirement by a small margin through the documentation of progress made by Federal Measures. In 2005, the plan meets the ROP milestone by a wide margin since the bulk of the State's NO_X point source are required to be implemented in 2003 and 2005. It should be noted that TNRCC's ROP proposal does not reflect the changes proposed May 30, 2001 to the NO_X point source rules in response to the settlement of the industry legal challenge. These proposed changes delay some of the reductions planned for 2005 and reduce slightly the amount of total emission reductions that will occur in 2007 due to the relaxation of the electric utility generation rules. EPA has estimated the amount of emission reductions that it believes will occur in 2005 and 2007 as a result of the proposed changes to the rules and reflected these estimates in the Tables. Also, because of the wide margin, TNRCC did not include in the ROP plans a significant portion of the emission reductions included in the attainment plan, such as the Voluntary Measures program, Low emission diesel and speed limit reductions.

C. Post 1999 ROP MVEBs

What Are the MVEBs Established by These Plans and Proposed for Approval?

The MVEBs established by these plans and that we are proposing to approve are contained in Table 8. We find the MVEBs consistent with all ROP SIP requirements. In addition, we are taking comment in this action on the adequacy of the MVEBs for transportation conformity purposes pursuant to the criteria in 40 CFR 93.118(e)(4) as part of our proposed action on the SIP rather than using the web posting process because we are moving forward on this SIP in a quick manner as described in *Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations* dated November 3, 1999.

TABLE 8.—ROP SIP MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2002	2005	2007
VOC	100.07	68.52	79.51
NO_X	260.85	185.48	156.6

The 2005 and 2007 ROP budgets are being proposed for revision in the June 15, 2001 submission being parallel processed. The new 2007 budgets are being proposed by Texas pursuant to a settlement agreement and are taken from the attainment demonstration modeling rather than directly from the ROP calculations. Emissions estimates used to demonstrate transportation

conformity will be derived using the assumptions used to develop these emissions budgets for the 2007 attainment SIP MVEBs, pursuant to 40 CFR 93.122(a)(6). We find such MVEBs consistent with ROP.

VII. 15% Rate Of Progress Plan

Proposed Action

What Action Are We Proposing To Take?

We are proposing full approval of the 15% plan submitted on August 8, 1996, contingent upon us finalizing full approval of the State's I/M program for the HG nonattainment area, which is included in the 15% plan. The 15% plan was given conditional, interim approval on November 10, 1998, pending corrections to the I/M program. This ROP plan was given conditional, interim approval because it relied on emissions reductions from the I/M program that received conditional, interim approval. For further information on the I/M conditional, interim approval, see 62 FR 37138, July 11, 1997. We found that the State had met the conditions of the conditional approval, and on April 23, 1999, we removed the conditions and granted Texas a final interim approval of the I/M SIP under the National Highway System Designation Act of 1995, Public Law 104–59, section 348(c)(1). See, 64 FR 19910. The interim approval expired on February 11, 1999. Texas has submitted significant revisions to the I/M program for the HG area. The revisions expand the program from Harris county to seven additional counties in the nonattainment area. We are taking a separate action on these I/M revisions (proposed approval 66 FR 31199, June 11, 2001). Because the revisions appear to have eliminated the last impediment to full approval of the I/M program for the HG area, we are proposing full approval of the HG area's 15% plan. This proposed full approval of the 15% plan will not be finalized unless and until action finalizing full approval of the I/M program is signed. If the I/M program is disapproved, we will disapprove the 15% plan. If we disapprove the 15% plan, we cannot finalize a full approval of the HG attainment demonstration SIP. See 63 FR 62943 and the 15% plan TSD for additional information on the HG area's 15% plan.

How Did the Inspection/Maintenance Program Submitted With the Attainment Demonstration Purport To Cure the Previous Deficiencies?

As stated previously, a conditional interim approval for the Motorist Choice I/M Program was proposed on October 3, 1996 (61 FR 51651). Conditional interim approval was published on July 11, 1997 (62 FR 37138). The conditions were removed from the interim approval on April 23, 1999 (64 FR 19910). The interim approval status of this program lapsed on February 11, 1999.

The State submitted an approvable 18-month demonstration on February 8, 1999, as required by the National Highway System Designation Act of 1995, Public Law 104–59, section 348(c)(1). The program was not fully approved at that time because one provision of the interim approval remained: that the State provide evidence that the remote sensing program was effective in identifying the shortfall in number of vehicles needed to make up for the lack of a tailpipe testing program in all the nonattainment counties.

Modeling has since shown that NO_X reductions are essential to reaching attainment in the HG area. As a result, the Texas Motorist Choice I/M program has been revised to include measurement for NO_X emissions and to provide additional NO_X emission reductions by expanding coverage of the program to all eight counties within the HG nonattainment area. By revising the program to expand area coverage for NO_X SIP credits, the deficiency that prohibited full approval in the HG nonattainment area appears to be cured. All counties within the HG designated ozone nonattainment area will be participating in the full program. As indicated above, we have not yet taken a final action on the I/M submittal and cannot take final action on the ROP Plan and attainment demonstration SIP which rely upon reductions from the I/M plan, until the I/M revision is finally approved.

VIII. Summary of Related Measures EPA Must Approve Before EPA can Fully Approve the HG Attainment Demonstration

What Clean Air Act Requirements Apply to the HG Severe Area?

The following table presents a summary of the CAA requirements that are required for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA.

CAA REQUIREMENTS FOR SEVERE AREAS

—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy).
—Reasonably Available Control Technology (RACT) for VOC and NO_X.
—15 percent Rate-Of-Progress (ROP) plan for VOC through 1996.
—9 percent Rate-Of-Progress (ROP) plan for VOC through 1999.
—1990 baseline emissions inventory for VOC and NO_X.
—Periodic emissions inventory and source emission statement regulations.
—Enhanced Vehicle inspection and maintenance (I/M) program.
—Clean fuel vehicle program.
—Enhanced monitoring program.
—Reformulated gasoline.
—3%/yr ROP plan(Post 1999).
—Measures to offset VMT growth.
—Requirement for fees for major sources for failure to attain.

** Areas that are currently attaining the standard or can demonstrate that NO_X controls are not needed can request a NO_X waiver under section 182(f). The HG area is not such an area.

A listing of applicable requirements and the effective dates of their EPA approvals for the HG area is contained in the TSD for this rulemaking.

What Measures Must Be Finally Approved Before We Can Finalize the Approval of the Attainment SIP?

We cannot finalize approval of the attainment demonstration SIP and its associated MVEBs unless and until we have finalized action on the following rules since they are relied upon in the attainment demonstration:

1. Vehicle I/M program (30 TAC 114). Recent legislation and the rule allow Liberty, Chambers and Waller counties to submit an alternative air control strategy by May 1, 2002 (the I/M program does not apply in those counties until May 1, 2004). The alternative strategy must be approved by TNRCC and EPA (in the form of a SIP revision) and must provide modeled reductions in NO_X and VOC equivalent to the reductions modeled for these counties from the I/M program. This flexibility is an acceptable approach as long as the implemented I/M program covers the urbanized area within the HG Metropolitan statistical Area and does not rely on the remote sensing program for vehicle coverage.[3] For further discussion, please see the proposed approval (66 FR at 31200) and accompanying TSD as well as 30 TAC section 114.50(a)(4)(G). It should be noted that unless the equivalent emission reductions are from mobile

[3] It should be noted that these three counties are not part of the urbanized area and, therefore, not required to be part of the I/M program. See, 40 CFR 51.350(a)(2).

sources, the MVEBs will be impacted by these areas opting out of I/M.

2. Revised emission specifications in the HG area for NO_X Point Sources (30 TAC 117). Note certain portions of this rule submitted December 20, 2000 have been proposed for revision. Texas has submitted these revisions for parallel processing.

3. NO_X Cap and Trading program (30 TAC 101). Note certain portions of this rule submitted December 20, 2000 has been proposed for revision. Texas has submitted these revisions for parallel processing.

4. Low emission diesel fuel (30 TAC 114). Texas has proposed a revision to the rule that was submitted by the Governor in December 2000. Further revisions that were approved for public comment by TNRCC on May 10, 2001, include a change to the area of coverage, a later implementation deadline, and allowing alternate diesel formulations (if approved by EPA) as a means of compliance. These revisions correspond to changes in the statutory authority of TNRCC to regulate fuels. These changes are in Texas House Bill 2912. This bill establishes certain guidelines for fuel regulations that are more stringent than federal requirements. In a letter dated June 15, 2001, a SIP revision was submitted, along with a request for parallel processing.

5. Non-Road Large Spark-Ignition (LSI) Engines (30 TAC Chapter 114, Subchapter I, Division 3). This rule requires that non-road large spark-ignition engines of 25 horsepower (hp) or larger conform to Title 13 of the California Code of Regulations, Chapter 9. Section 209(e)(2)(B) of the Act allows another state to adopt requirements for non-road engines if such regulations are identical to California's requirements. EPA has promulgated regulations, codified at 40 CFR 85.1606, setting forth the criteria for adoption of California regulations regarding non-road vehicles and non-road engines. We are addressing this measure in a separate action.

6. Agreed Orders with Continental and Southwest Airlines and the City of Houston. The Agreed Orders make enforceable specific local emission reductions of NO_X from sources under the airlines' control. The agreement with the City of Houston is to bring about additional reductions from operations in the Houston Airport System. We will address the agreed orders in a separate action.

7. Reasonably Available Control Technology (RACT) rules regulating VOCs from Batch Processes (30 TAC 115) and Offset Lithographers (30 TAC 115). These rules submitted December 20, 2000 ensure that RACT is in place on major sources of VOCs in these categories in the HG area. We will address these rules in a separate action.

8. A determination that the HG SIP includes all Reasonably Available Control Measures. See section IV.H.

9. The 15% ROP Plan. See section VII.

10. The Post 1999 ROP Plans and contingency measures. See section VI.

11. The revisions to the 1990 base year inventory. See Section VI.

12. The speed limit reductions, the VMEP and the TCMs. See section V.

13. Lawn service equipment operating restrictions (30 TAC 114.452–459). This is a rule that would implement an operating-use restriction program requiring that the handheld and non-handheld spark-ignition engines, rated at 25 hp and below, be restricted from use by commercial operators between the hours of 6:00 a.m. and noon, April 1 through October 31, in Brazoria, Fort Bend, Galveston, Harris, and Montgomery counties. For more information on this measure, see our proposed approval at 66 FR 31197 (June 11, 2001).

14. Vehicle Miles Traveled (VMT) Offset Plan.

15. Motor Vehicle Idling Limitations (30 TAC 114.500–509). This rule establishes idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles in the HG area. For more information on this measure, see our proposed approval at 66 FR 31197 (June 11, 2001).

16. Stationary Diesel Generator rule (30 TAC 117.206). This rule was submitted for parallel processing in a letter dated June 15, 2001, as part of other proposed revisions to the NO_X point source rules. Its approval is necessary to insure that all RACM have been adopted in the HG area.

17. The Post 1996 ROP Plan and contingency measures. See Section VI.

IX. EPA Guidance

What EPA Guidelines Apply To the Attainment Demonstration Submittals?

The following documents, among others, contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model,* EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: ''UAMREG'').

2. Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources (Revised) (1992).

3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: ''UAMRPTRQ'').

4. User's Guide to MOBILE5 (Mobile Source Emission Factor Model), May 1994.

5. Memorandum, ''Ozone Attainment Demonstrations,'' from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

6. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: ''O3TEST'').

7. Memorandum, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS,'' from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html* .

8. Memorandum, ''Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS (Draft),'' 1998.

9. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations,'' from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Web site: *www.epa.gov/oms/transp/conform/nov3guid.pdf*

10. Memorandum, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.

11. Draft Memorandum, ''1-Hour Ozone NAAQS—Mid-Course Review Guidance,'' from John Seitz, Director, Office of Air Quality Planning and Standards.

12. Memorandum ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' November, 1999.

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely

proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. 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.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Attainment, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 2, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–17470 Filed 7–11–01; 8:45 am]

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Federal Register

Thursday,
July 12, 2001

Part IV

Department of Commerce

Bureau of Export Administration

15 CFR Part 740, et al.

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 515, et al.

Exports of Agricultural Commodities, Medicines, and Medical Devices to Cuba, Sudan, Libya, and Iran; Cuba Travel-Related Transactions; Final Rules

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 742, 746, 772 and 774

[Docket No. 010612152–1152–01]

RIN 0694–AC37

Exports of Agricultural Commodities, Medicines and Medical Devices

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to implement certain provisions of the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000. The TSRA requires the President to terminate existing U.S. unilateral agricultural and medical sanctions and also provides that the export of agricultural commodities, medicines and medical devices to designated terrorist countries be made in accordance with the licensing regime described in that Act. The Department of Commerce is implementing TSRA as it relates to exports of agricultural commodities to Cuba. This rule establishes License Exception Agricultural Commodities (AGR) to permit exports and reexports to Cuba of agricultural commodities that are not specifically identified on the Commerce Control List (CCL) and are classified as EAR99. The Department of the Treasury's Office of Foreign Assets Control (OFAC) is implementing TSRA as it relates to exports to Iran, Libya, and Sudan of agricultural commodities, medicines and medical devices that are not specifically identified on the CCL and are classified as EAR99.

DATES: This rule is effective July 26, 2001. Comments must be received by September 10, 2001.

ADDRESSES: Written comments should be sent to Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196, E-mail: bnilsson@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2000, the President signed the Trade Sanctions Reform and Export Enhancement Act (TSRA) (Title IX of Pub. L. 106–387) which provides that the President shall terminate any unilateral agricultural sanction or unilateral medical sanction in effect as of the date of enactment of the TSRA, except that exports of agricultural commodities, medicines and medical devices to designated terrorist countries are subject to the export requirements described in the TSRA. A designated terrorist country is a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961, section 6(j)(1) of the Export Administration Act of 1979, or section 40(d) of the Arms Export Control Act.

The TSRA does not require the President to terminate any unilateral agricultural sanction or unilateral medical sanction that prohibits, restricts or conditions the provision or use of any agricultural commodity, medicine or medical device that is controlled on the United States Munitions List, controlled on any control list established by the Export Administration Act of 1979 or any successor statute, or used to facilitate the development or production of chemical or biological weapons or weapons of mass destruction.

This rule amends the EAR to create a new License Exception AGR for exports of agricultural commodities classified as EAR99 from the United States to Cuba and reexports of U.S. origin agricultural commodities classified as EAR99 to Cuba. The Department of the Treasury's Office of Foreign Assets Control is also taking action to implement the TSRA requirements, notably with respect to agricultural and medical exports classified as EAR99 to Iran, Sudan and Libya.

I. License Exception Agricultural Commodities (AGR) to Cuba

This rule establishes a new License Exception Agricultural Commodities (AGR) in § 740.18 of the EAR. License Exception AGR authorizes exports and certain reexports of agricultural commodities provided that they are classified as EAR99 and meet all the other criteria of License Exception AGR, including the prior notification requirements described below. License Exception AGR is not applicable for items controlled under a specific Export Control Classification Number (ECCN) on the Commerce Control List (CCL). To be eligible for AGR, shipments of agricultural commodities must be made pursuant to a written contract and must take place within one year of the signing of a contract, unless the shipment is a commercial sample or donation in which case the contract requirement does not apply. Agricultural commodities are defined in part 772 (Definitions of Terms) of the EAR *and* must be classified as EAR99 to be eligible for License Exception AGR. Transactions that do not satisfy all the criteria of License Exception AGR require a license from BXA.

Prior Notification Requirement

As noted above, to be eligible for License Exception AGR, exporters must also provide prior notification by completing the Multipurpose Application Form (BXA–748P) or its electronic equivalent and including certain information requested on the BXA–748P form. The following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5, 14, 16, 17,18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BXA has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). The box ''other'' must be selected as the type of application. This designator will automatically place the notification into a special review track. BXA will not initiate the registration of the notice unless all the required information is complete. BXA will refer notifications to interested reviewing agencies within two business days of registration. The application control number will allow exporters and reexporters to track their notices by calling the System for Tracking Export License Applications (STELA) at (202) 482–2752. STELA will provide the date of registration of the notification and a notification number. If no reviewing agencies raise objections within nine business days, STELA will confirm that you may proceed with the transaction, provided you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment. BXA will issue subsequent written confirmation. STELA will also advise if a license is required, in which case BXA will process the notification as a license application in accordance with the procedures described in part 750 and the licensing policies set forth in the EAR. BXA will change the notification number to a license application number. At this time, BXA may request additional information to complete the

processing of the license application. These procedures implement section 906(a)(1) of the Trade Sanction Reform and Export Enhancement Act which requires that procedures be in place to deny exports of agricultural commodities to any entity in Cuba that promotes international terrorism.

Donations of Agricultural Commodities to Cuba

Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception, except the contract requirement does not apply. Donations of food items to non-governmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See § 740.12 for eligibility requirements of gift parcels and humanitarian donations under License Exception GFT.

Exports of Medicines and Medical Devices to Cuba

Exports of medicines and medical devices are not eligible for export or reexport to Cuba under TSRA procedures and, therefore, License Exception AGR is not available. Such items continue to require authorization for export to Cuba under the provisions of the Cuban Democracy Act (CDA) (22 U.S.C. 6004). BXA reviews applications for such exports on a case-by-case basis and will generally approve such exports unless one of the restrictions set forth in the CDA and in section 746.2 of the EAR applies. As is the standard licensing practice under the EAR, licenses issued have a twenty-four month validity period. Exporters are not required to have a written contract to apply for an export license.

II. OFAC Authorization for Agricultural Commodities, Medicines and Medical Devices to Iran, Libya and Sudan

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is implementing the provisions of TSRA as they relate to exports of agricultural commodities, medicines and medical devices that are classified as EAR99 to Iran, Libya and Sudan. Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities, medicines and medical devices to Iran, Libya and Sudan.

As explained in the OFAC regulations, exporters must have an official commodity classification of EAR99 from BXA for all medical devices (including supplies) prior to submitting an application to OFAC, unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html.* This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to OFAC review. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99. Exporters who are unable to access BXA's website may contact BXA at 202–482–4811 to obtain BXA's medical supplies list.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. As explained in the OFAC regulations, when submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website. If exporters are unsure if their medicine is on the CCL, they should seek an official commodity classification from BXA confirming that their medicine is classified as EAR99 prior to submission of an application to OFAC under its expedited review procedures. Exporters who are unable to access BXA's website may contact BXA at 202–482–4811 to obtain BXA's list of medicines that are on the CCL.

For agricultural commodities, an official commodity classification of EAR99 from BXA is only required for fertilizers, western red cedar, and live horses. See section 748.3 of the EAR for instructions for submitting commodity classification requests.

III. Definitions and Procedures for Classifying Agricultural and Medical Commodities

This rule establishes new definitional entries for ''agricultural commodities'', ''medicines'' and ''medical devices'' in part 772 of the EAR. Commodities included within these definitions must be classified as EAR99 to be eligible for License Exception AGR or OFAC authorization. Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities, medicines and medical devices to Iran, Libya and Sudan.

Agricultural Commodities

Agricultural commodity is defined in § 902 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (§ 902 of Public Law 106–387), which incorporates by reference the definition of agricultural commodity in section 102 of the Agriculture Trade Act of 1978 (7 U.S.C. 5602). Section 775 of Public Law 106–387 also provides that, for purposes of administering Title IX of the TSRA, the term agricultural commodity also includes fertilizer and organic fertilizer.

Under this rule, agricultural commodities include food commodities, feed, fish, shellfish and fish products; beer, wine and spirits; soft drinks; livestock; fiber, including cotton, wool and other fibers; tobacco and tobacco products; wood and wood products, including lumber and utility poles; seeds; and reproductive materials such as fertilized eggs, embryos and semen. A list of these commodities is available for review at the U.S. Department of Agriculture website at http://www.fas.usda.gov/itp/sanctions.html. If you have questions regarding whether an item is defined by section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. § 5602), you should consult with the Department of Agriculture.

Consistent with section 775 of Pub. L. 106–387, this rule also includes fertilizers and organic fertilizers in the scope of agricultural commodities. Although items in this paragraph may not be specifically identified as agricultural commodities on the Department of Agriculture website, they are considered agricultural commodities under the EAR and for purposes of implementation of the TSRA.

For purposes of License Exception AGR (see section 740.18), agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water. These items do not fall within the scope of § 102 of the 1978 Agricultural Trade Act and are not identified as agricultural commodities on the Department of Agriculture website, but are treated as agricultural commodities for the purposes of License Exception AGR.

Under this rule, agricultural commodities do *not* include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

Note, however, that certain items that meet the definition of agricultural commodity are controlled on the CCL

and are not eligible for BXA's License Exception AGR for Cuba or OFAC's revised export procedures for Iran, Libya and Sudan. These include certain fertilizer products controlled under new ECCN 1C997, western red cedar controlled under ECCN 1C988, and live horses (if to be exported by sea) controlled under ECCN 0A980. For other fertilizer products, western red cedar and live horses that are not controlled on the CCL, exporters must have an official commodity classification of EAR99 from BXA prior to submission of a notification under License Exception AGR to BXA (for Cuba) or submission of a request for authorization to OFAC (for Iran, Libya, and Sudan). Exporters should review OFAC's regulations for the requirements relating to exports of agricultural commodities to Iran, Libya and Sudan.

In sum, two specific determinations are required prior to qualifying for BXA or OFAC authorization under the TSRA procedures: that the product is an agricultural commodity as defined in part 772 of the EAR; and that it is classified as EAR99 under the EAR.

For Cuba, items that are not agricultural commodities, as well as items that are agricultural commodities but that are on the CCL, will require a license from BXA. BXA will review such applications under the licensing policies set forth in § 746.2 (15 CFR 746.2).

Medicines and Medical Devices

Medicines and medical devices are not eligible under License Exception AGR to Cuba, but are eligible for OFAC authorization to Iran, Libya and Sudan. For the purposes of TSRA, medicines are drugs as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321). Pursuant to the Act, BXA has determined that for the purposes of this rule, medicines include prescription medicines and over the counter medicines for humans and animals. Medical devices are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) under the term ''device''. Pursuant to the Act, BXA has determined that for the purposes of this rule, medical devices include medical supplies, instruments, equipment, equipped ambulances, institutional washing machines capable of sterilizing hospital clothing and bedding, and vehicles with installed medical testing equipment. Medical devices do not include general purpose furniture such as desks, tables, or lamps used in hospital offices and waiting rooms. Exporters should consult with the Food and Drug Administration for guidance on whether an item meets the definition of medicine or medical device under the Federal Food, Drug and Cosmetic Act. Although most medicines and medical devices are classified as EAR99, certain vaccines, biological and chemical products, and parts for medical devices are controlled under specific ECCNs on the CCL.

For exports of medicines and medical devices to Iran, Libya, and Sudan, two specific determinations are required prior to submitting a request for OFAC authorization: that the product is a medicine or medical device as defined in part 772 of the EAR; and that it is classified as EAR99 under the EAR.

Exporters should review OFAC's regulations for the requirements relating to exports of medical devices to Iran, Libya and Sudan. As explained in the OFAC regulations, prior to submitting an application to OFAC, exporters must have an official commodity classification of EAR99 from BXA for all medical devices (including supplies), unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/Trade Sanctions Reform Export EnhancementAct.html.* This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to OFAC review. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. As explained in the OFAC regulations, when submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website. If exporters are unsure if their medicine is on the CCL, they should seek an official commodity classification from BXA confirming that their medicine is classified as EAR99 prior to submission of an application to OFAC under its expedited review procedures. Exporters should review OFAC's regulations for the requirements relating to exports of medicines to Iran, Libya and Sudan.

As noted above, exports of medicines and medical devices are not eligible for export or reexport to Cuba under TSRA procedures. Such items continue to require authorization for export to Cuba under the provisions of the Cuban Democracy Act (CDA) (22 U.S.C. 6004). For clarity and conformity, however, the term ''medical devices'' defined under TSRA is determined to be coextensive with the terms ''medical supplies, instruments and equipment'' used in section 1705 of the CDA. This rule also defines the term ''medicines'' for the purposes of the TSRA and will also apply this definition to ''medicines'' as that term is used in the CDA.

IV. Commodity Classification Requirements

As explained in the OFAC regulations, for exports of medical devices to Iran, Libya, and Sudan, exporters must have an official commodity classification of EAR99 from BXA prior to submission of a request for authorization under OFAC's expedited review procedures, unless the medical supply is specifically listed on BXA's website. The medical supply list identifies those medical supplies that *do not* require BXA classification prior to OFAC review. For exports of medicines to Iran, Libya, and Sudan, exporters must confirm that their item is *not* described on BXA's medicines list on BXA's website. The medicines list identifies medicines that are not eligible for OFAC's expedited review procedures. For exports of fertilizers, western red cedar, and live horses, a BXA commodity classification is required prior to submission of a notification for Cuba under License Exception AGR or prior to submission of a request to OFAC under its expedited review procedures for Iran, Libya or Sudan.

V. Continuing Controls

This rule also does not affect controls on any agricultural commodity, medicine or medical device classified under a specific ECCN on the CCL. In addition, this rule does not affect U.S. controls on technology or software used to manufacture agricultural commodities or on technology to design or produce biotechnological items, or medical devices.

Except for the creation of new License Exception AGR in section 740.18, this rule does not make any other license exception available for exports to Cuba, nor does it change the availability or non-availability of any other License Exception. Note that License Exception AVS does not authorize the export of vessels from the United States on temporary sojourn. Consistent with the 1992 Cuban Democracy Act, License Exception AVS does not authorize the export of ship stores, equipment or spares for use on a vessel, bunkering fuel, petroleum and petroleum items

and dunnage for use on any vessel carrying goods or passengers to or from Cuba. Therefore, a specific license is required from BXA for all such exports.

Also in continuation of current rules, aircraft that are on temporary sojourn to Cuba that are carrying items eligible for export under License Exception AGR and that satisfy all the requirements of License Exception AVS (§ 740.15(a) of the EAR) do not need a specific license from BXA. Aircraft that do not satisfy all requirements of License Exception AVS will require a specific license from the BXA and license applications will be reviewed on a case-by-case basis and favorably considered when carrying commodities authorized under the EAR. OFAC also is responsible for licensing family remittances and the financial transactions of persons traveling to Cuba, including travel associated with sales of agricultural commodities to Cuba and persons that accompany cargo on aircraft authorized by BXA.

Finally, this rule does not affect U.S. nonproliferation export controls, including end-use controls (known as the Enhanced Proliferation Control Initiative or EPCI). This rule does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that you may not, without a license, knowingly export or reexport any item subject to the EAR for use in an activity that is prohibited by part 744 of the EAR. BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, BXA's ''Know Your Customer'' Guidance and Red Flags.

VI. New Controls

Consistent with the provisions of the Export Administration Act (EAA), as amended, and after consultation with the Secretary of State, BXA submitted a foreign policy report to the Congress providing notice of its intent to impose new foreign policy controls on ammonium nitrate, including fertilizers and fertilizer blends containing more than 15% by weight ammonium nitrate, except liquid fertilizers (containing any amount of ammonium nitrate) or dry fertilizers containing less than 15% by weight ammonium nitrate. These items are now classified as ECCN 1C997, and require a license for anti-terrorism reasons. This foreign policy report was sent to Congress on June 15, 2001. In the development of a final rule, BXA may further amend the EAR to add certain medicines and medical devices to the CCL.

VII. Technical Changes

This rule amends sections 746.3 and 746.7 to clarify the requirements for exports and reexports to Iran and Iraq.

This rule amends the EAR in the following ways:

Part 740 (License Exceptions)

New License Exception Agricultural Commodities (AGR) is established in § 740.18 of the EAR for exports of agricultural commodities classified as EAR99. License Exception AGR authorizes the export of agricultural commodities from the United States and reexport of U.S. origin agricultural commodities to Cuba provided that the notification requirements and other provisions of License Exception AGR are met.

For purpose of transparency, this rule also restates in section 740.2 (Restrictions on All License Exceptions) that license exceptions may not be used for exports or reexports to a destination subject to a comprehensive embargo, unless specifically authorized in the section dealing with a particular embargoed country in part 746 (Embargoes and Other Special Controls) of the EAR.

Part 742 (Control Policy: CCL Based Controls)

In § 742.8, § 742.9, § 742.10, § 742.19, and Supplement No. 1 to Part 742, references are added to reflect the new control status and licensing policy for ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997. Licenses are required under the EAR for the export and reexport of fertilizers controlled by ECCN 1C997 to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. Applications for items controlled under new ECCN 1C997 are subject to a case-by-case review with general policy of denial to all end-users.

Part 746 (Embargoes and Other Special Controls)

Section 746.2 Cuba

In § 746.2 (Cuba), License Exception AGR eligibility is established for exports and certain reexports of agricultural commodities classified as EAR99 to Cuba. The licensing review policy in § 746.2 is revised to apply to exports and reexports of agricultural commodities subject to the EAR that do not meet the eligibility requirements of License Exception AGR and to other agricultural items (e.g. insecticides, pesticides and herbicides).

Medicines and medical devices continue to require an export license to Cuba under the provisions of the CDA. Note that the definition of medical devices under TSRA is determined to be coextensive with the terms ''medical supplies'', ''instruments'' and ''equipment'' under the CDA and § 746.2 is revised to use the terms medicines and medical devices, which are defined in part 772.

Section 746.3 Iraq

§ 746.3 is revised to reflect new controls on certain fertilizer products under new ECCN 1C997. This section also clarifies that no person may export or reexport any item subject to both the EAR and OFAC's Iraqi Sanctions Regulations without prior OFAC authorization and that exports and reexports subject to the EAR that are not subject to the Iraqi Sanctions Regulations may require authorization from BXA.

Section 746.7 Iran

This section is revised to clarify that exports and reexports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA.

Part 772 Definitions of Terms

In part 772, this rule adds definitions for the terms ''agricultural commodities'', ''medicines'', and ''medical devices'' consistent with Sections 902 and 775 of Pub. L. 106–387.

Part 774 The Commerce Control List

In Supplement No. 1 to part 774, ECCN 1C997 is added to the CCL. A license is required for the export or reexport of ammonium nitrate, including fertilizers which contain certain concentrations of ammonium nitrate, to terrorist supporting countries.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and

45 minutes to submit manually on multipurpose Application Form (BXA–748P). This rule contains a new information collection requirement that has been submitted for emergency approval under control number 0694-XXXX, ''Prior Notification for Exports under License Exception AGR''. Prior notification using existing form BXA–748P requires burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. *See* 5 U.S.C. 553(a)(1). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 10, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through www.bxa.doc.gov). If requesters cannot access BXA's website, please call the number above for assistance.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Parts 742, 772 and 774

Exports, Foreign trade.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 742, 746, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 740 and 772 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206 (66 F.R. 18397, April 9, 2001).

2. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 9, 2000 (65 F.R. 68063, November 13, 2000); E.O. 13206 (66 F.R. 18397, April 9, 2001).

3. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); E.O. 13206 (66 F.R. 18397, April 9, 2001).

4. The authority citation for parts 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–387; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206 (66 F.R. 18397, April 9, 2001).

PART 740—[AMENDED]

5. Section 740.1 is amended by revising paragraph (a) to read as follows:

§ 740.1 Introduction.

* * * * *

(a) *Scope.* A ''License Exception'' is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, or Three, as indicated under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Eight, Nine, or Ten, then no License Exceptions apply.

* * * * *

6. Section 740.2 is amended by adding paragraph (a)(6) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(6) The export or reexport is to an embargoed destination (Cuba, Iran, Iraq, and Libya), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular embargoed country in part 746 of the EAR.

* * * * *

7. Section 740.18 is added to read as follows:

§ 740.18 Agricultural commodities (AGR).

(a) *Eligibility requirements.* License Exception AGR permits the export of agricultural commodities to Cuba, as well as the reexport of U.S. origin agricultural commodities to Cuba, provided your transaction meets *all* of the following criteria:

(1) The commodity meets the definition of ''agricultural commodities'' in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BXA for fertilizers, western red cedar and live horses before you submit a notification under this license exception. See § 748.3 of the EAR for information on how to submit a commodity classification request;

(3) The export or reexport is made pursuant to a written contract, except for donations and commercial samples which are not subject to this contract requirement;

(4) The export or reexport is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required). In the case of multiple partial shipments, all such shipments must be made within the 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required); and

(5) You notify BXA prior to exporting or reexporting according to the procedures set forth in paragraph (c) of this section. If you intend to engage in multiple shipments during the one-year period after the signing of the contract, you need only notify BXA prior to the first shipment.

(b) *Restrictions.* (1) No export or reexport to any individual or entity designated as a Specially Designated Terrorist or Foreign Terrorist Organization may be made under License Exception AGR (see part 744 of the EAR).

(2) No export or reexport to or for use in biological, chemical, nuclear warfare or missile proliferation activities may be made under License Exception AGR (see part 744 of the EAR).

(3) No U.S.-owned or controlled foreign firm may export from abroad to Cuba a foreign produced agricultural commodity containing more than 10% U.S.-origin content. Such U.S.-owned or controlled foreign firms require a specific license from BXA as well as the Department of the Treasury's Office of Foreign Assets Control (OFAC). Transactions not subject to the EAR (under 10% U.S.-origin content) require a license from OFAC.

(c) *Prior notification.* (1) *General requirement.* You must notify BXA prior to any export or reexport (or prior to the first of multiple shipments) under License Exception AGR.

(2) *Procedures.* You must provide prior notification of exports and reexports under License Exception AGR by submitting a completed Multipurpose Application Form (BXA–748P) or its electronic equivalent. The following blocks must be completed, as appropriate, on the Multipurpose Application Form: Blocks 1, 2, 3, 4, 5 (by marking box 5 ''Other''), 14, 16, 17, 18, 19, 21, 22 (a), (e), (f), (g), (h), (i), (j), 23, and 25 according to the instructions described in Supplement No. 1 to part 748 of the EAR. If your commodity is fertilizer, western red cedar or live horses, you must confirm that BXA has previously classified your commodity as EAR99 by placing the Commodity Classification Automatic Tracking System (CCATS) number in block 22(d). BXA will not initiate the registration of an AGR notification unless all requested information on the Multipurpose Application form is complete.

(3) *Action by BXA.* Within two business days of the registration of the AGR notification, BXA will refer the notification for interagency review, or if necessary return the notification without action (e.g., if the information provided is incomplete). Registration is defined as the point at which the notification is entered into BXA's electronic system.

(4) *Review by other departments or agencies.* The Departments of Defense, State, and other agencies, as appropriate, may review the AGR notification. BXA must receive department or agency objections within nine business days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the AGR notification. If, within 11 business days after the date of registration, any reviewing agency provides a written objection that the recipient may promote international terrorism or the transaction raises nonproliferation concerns, you may not use License Exception AGR. In such cases, BXA will notify you that a license is required for the export or reexport. BXA will then process the AGR notification as a license application in accordance with the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the EAR. At this time, BXA may request additional information. When BXA confirms that no agency has raised an objection within eleven business days (as described in paragraph (c)(5) of this section), you may proceed with the transaction provided that you satisfy all other requirements of License Exception AGR, including the requirement to have a written contract prior to any shipment (unless a donation or commercial sample). (Note that the fact that you have been advised that no agency has objected to the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(5) *Status of pending AGR notification requests.* You must contact BXA's System for Tracking Export License Applications (''STELA'') at (202) 482–2752 for status of your pending AGR notification. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the AGR notification. If no department or agency objection is raised within 11 business days, STELA will, on the twelfth business day following the date of registration, provide you with confirmation of that fact. You may not proceed with your shipment unless you confirm with STELA that no objection has been raised. BXA will subsequently issue written confirmation to you. If an objection is raised, STELA will indicate that a license is required. The AGR notification will then be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(d) *Donations.* (1) Donations of agricultural commodities are eligible for export and reexport to Cuba under License Exception AGR, provided the transaction meets the requirements and procedures of this license exception (except the written contract requirement).

(2) Donations of food items to non-governmental organizations (NGOs) and individuals in Cuba may also be eligible for License Exception GFT. See § 740.12 for eligibility requirements of gift

parcels and humanitarian donations under License Exception GFT.

PART 742—[AMENDED]

8. § 742.8 is amended by revising the phrase ''(c)(6) through (c)(41)'' in paragraph (a)(4)(ii) to read ''(c)(6) through (c)(43)''.

9. § 742.9 is amended by revising the phrase ''(c)(22) through (c)(41)'' in paragraph (a)(3)(ii) to read ''(c)(22) through (c)(43)'' and by adding new paragraph (b)(1)(viii) to read as follows:

§ 742.9 Anti-terrorism: Syria.

* * * * *

(b) * * *

(1) * * *

(viii) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

10. § 742.10 is amended by revising the phrase ''(c)(16) through (c)(41)'' in paragraph (a)(4)(ii) to read ''(c)(16) through (c)(43)'' and by adding new paragraph (b)(1)(ix) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) * * *

(ix) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

11. § 742.19 is amended by adding new paragraph (b)(1)(xviii) to read as follows:

§ 742.19 Anti-terrorism: North Korea.

* * * * *

(b) * * *

(1) * * *

(xviii) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.

* * * * *

12. Supplement No. 2 to Part 742 is amended by revising paragraph (b)(3)(ii) and adding paragraph (c)(43) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(b) * * *

(3) * * *

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(43) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(44) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(43) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(43) of this Supplement.

(c) * * *

(43) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, under ECCN 1C997 on the CCL.

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: June 15, 2001.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: June 15, 2001.

* * * * *

PART 746—[AMENDED]

13. Section 746.2 is amended by adding paragraph (a)(1)(xii), by revising paragraphs (b)(1) introductory text, (b)(3)(iii)(B), (b)(3)(iii)(D) and (b)(4)(iii), by redesignating paragraph (d) as (e), and by adding new paragraph (d), and by revising redesignated paragraph (e) to read as follows:

§ 746.2 Cuba.

(a) * * *

(1) * * *

(xii) Exports of agricultural commodities, classified as EAR99, under License Exception Agricultural Commodities (AGR) and certain reexports of U.S. origin agricultural commodities, classified as EAR99, under License Exception AGR (see § 740.18 of the EAR).

* * * * *

(b) * * *

(1) *Medicines and Medical Devices.* Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except:

* * * * *

(3) * * *

(iii) * * *

(B) Your transaction involves the export of foreign-produced medicines or medical devices incorporating U.S. origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.

(C) * * *

(D) Your transaction is for the export of donated food to individuals or non-governmental organizations in Cuba and does not qualify as a humanitarian donation under License Exception GFT (§ 740.12 of the EAR) or License Exception AGR (§ 740.18 of the EAR).

(4) * * *

(iii) Exports of agricultural items, which are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, as well as agricultural commodities not eligible for License Exception AGR, require a license and will be reviewed on a case-by-case basis.

* * * * *

(d) *Definitions.* For purposes of this section, ''U.S. person'' means any person subject to the jurisdiction of the United States, as described in § 515.329 of the Cuban Assets Control Regulations (31 CFR 515.329).

(e) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515. OFAC's Terrorism List Government Sanctions Regulations in 31 CFR part 596 prohibit U.S. persons from engaging in a financial transaction with the government of a designated state sponsor of international terrorism without OFAC authorization. The Department of State also implements sanctions on countries that are designated state sponsors of international terrorism. Exporters and reexporters should consult with those agencies for further guidance on these related controls.

14. Section 746.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 746.3 Iraq.

(a) *License requirements.* OFAC administers an embargo against Iraq under the authority of the International Emergency Economic Powers Act of 1977, as amended, and the United Nations Participation Act of 1945, as amended, and in conformance with United Nations Security Council Resolutions. The applicable OFAC regulations, the Iraqi Sanctions Regulations, are found in 31 CFR part 575. You should consult with OFAC for authorization to export or reexport items subject to U.S. jurisdiction to Iraq, or to any entity owned or controlled by, or specially designated as acting for or on behalf of, the Government of Iraq. Please note that such applications will generally be denied by OFAC, absent a published policy stating otherwise. Under the EAR, you need a license to export or reexport to Iraq any item on the CCL containing a CB Column 1, CB

Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3 in the Country Chart Column of the License Requirements section of an ECCN, or classified under ECCNs 1C980, 1C981, 1C982, 1C983, 1C984, 1C997, 5A980, 0A980, 0A982, 0A983, 0A985, and 0E982; however, to avoid duplication, an authorization from OFAC constitutes authorization under the EAR, and no separate BXA authorization is necessary. No person may export or reexport any item subject to both the EAR and OFAC's Iraqi Sanctions Regulations without prior OFAC authorization. Exports and reexports subject to the EAR that are not subject to the Iraqi Sanctions Regulations may require authorization from BXA.

* * * * *

15. Section 746.7 is amended by adding a sentence to the end of the introductory paragraph, to read as follows:

§ 746.7 Iran.

* * * Exports and reexports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA.

* * * * *

PART 772—[AMENDED]

16. Section 772.1 is amended by adding the definitions of ''agricultural commodities'', ''medical devices'', and ''medicines'' in alphabetical order, to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Agricultural commodities. Agricultural commodities include food (including processed food); feed; fish; shellfish and fish products; beer, wine and spirits; livestock; fiber including cotton, wool and other fibers; tobacco and tobacco products; wood and wood products; seeds; fertilizer and organic fertilizer; reproductive materials such as fertilized eggs, embryos and semen. For the purposes of the EAR, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

Note 1: This definition of agricultural commodities includes fertilizer and organic fertilizer, as listed in section 775 of the 2001 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Act) (Public Law 106–387) and commodities listed in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602) as incorporated in section 902 of the Act, as well as commodities determined by the Department of Agriculture to fall within the scope of section 102 of the 1978 Agricultural Trade Act.

Note 2: For purposes of License Exception AGR (see § 740.18 of the EAR), agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water. These items do not fall within the scope of section 102 of the 1978 Agricultural Trade Act, but are treated as agricultural commodities for the purposes of License Exception AGR.

Note 3: For purposes of License Exception AGR and export license applications to Iran, Sudan and Libya under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control, agricultural commodities only include those that are classified as EAR99.

* * * * *

Medical devices. For purposes of the EAR, medical devices are ''devices'' as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) including medical supplies, instruments, equipment, equipped ambulances, institutional washing machines for sterilization, and vehicles with medical testing equipment. Note that certain component parts and spares to be exported for incorporation into medical devices are on the Commerce Control List. Only items meeting the definition of ''medical device'' and that are classified as EAR99 are eligible for export to Iran, Libya and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

Medicines. Medicines means ''drug'' as defined in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321). For purposes of the EAR, medicines includes prescription and over the counter medicines for humans and animals. Note that certain medicines, such as vaccines and immunotoxins, are on the Commerce Control List. Only items meeting the definition of ''medicine'' and that are classified as EAR99 are eligible for export to Iran, Libya and Sudan under the licensing procedures set forth in the appropriate regulations promulgated and administered by Treasury's Office of Foreign Assets Control.

* * * * *

PART 774—[AMENDED]

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' and ''Toxins'' is amended by adding Export Control Classification Number (ECCN) 1C997 to read as follows:

1C997 Ammonium Nitrate, Including Fertilizers and Fertilizer Blends Containing More Than 15% by Weight Ammonium Nitrate, Except Liquid Fertilizers (Containing Any Amount of Ammonium Nitrate) or Dry Fertilizers Containing Less Than 15% by Weight Ammonium Nitrate

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry.	AT Column 1 and Iraq

License Exceptions

LVS: N/A.
GBS: N/A.
CIV: N/A.

List of Items Controlled

Unit: Kilograms.
Related Controls: N/A.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

Dated: July 9, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–17465 Filed 7–10–01; 11:02 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR parts 515, 538, 550, and 560

Exports of Agricultural Products, Medicines, and Medical Devices to Cuba, Sudan, Libya, and Iran; Cuba Travel-Related Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule with request for comments; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing and amending regulations to implement the Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000). These regulations amend the licensing

provisions of the Cuban Assets Control Regulations, the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations, 31 CFR parts 515, 538, 550, and 560, respectively, as they relate to the exportation and reexportation from the U.S. or by U.S. persons of agricultural commodities, medicine, or medical devices to Cuba, Sudan, Libya, and Iran. These regulations also amend the Cuban Assets Control Regulations with respect to Cuba travel-related transactions.

DATES: *Effective Date:* July 26, 2001.

Comments: Written comments must be received no later than September 10, 2001. Comments should be sent to David W. Mills, Chief, Policy Planning and Program Management Division, Room 2176 Main Treasury Annex, 1500 Pennsylvania Ave. N.W., Washington, DC 20220 or via OFAC's website (http://www.treas.gov/ofac).

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance Programs, tel.: 202/622–2490, Steven I. Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara C. Hammerle, Acting Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

The Trade Sanctions Reform and Export Enhancement Act of 2000, Title IX of Public Law 106–387 (October 28, 2000) (the ''TSRA''), provides that the President shall terminate any unilateral agricultural sanction or unilateral medical sanction in effect as of the date of enactment of the TSRA. The TSRA does not direct the termination of any unilateral agricultural sanction or unilateral medical sanction that prohibits, restricts, or conditions the provision or use of any agricultural commodity, medicine, or medical device that is controlled on the United States Munitions List, controlled on any control list established by the Export Administration Act of 1979 or any successor statute, or used to facilitate the development or production of chemical or biological weapons or weapons of mass destruction. Exporters should consult the Department of Commerce, Bureau of Export Administration (''BXA''), to determine whether a particular item is controlled under specific Export Commodity Control Number (''ECCN'') on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (the ''CCL'').

Section 906 of the TSRA further requires that the export of agricultural commodities, medicine, or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State, under Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), to have provided support repeatedly for acts of international terrorism, or to any other entity in such a country, shall only be made pursuant to one-year licenses issued by the United States Government. The governments of Cuba, Sudan, Libya, and Iran have been designated as supporting international terrorism pursuant to section 6(j) of the Export Administration Act of 1979.

These regulations amend the Cuban Assets Control Regulations, 31 CFR part 515 (''CACR''), the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), the Libyan Sanctions Regulations, 31 CFR part 550 (the ''LSR''), and the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), to implement the TSRA as required. The Department of Treasury's Office of Foreign Assets Control (''OFAC'') has endeavored to implement the TSRA in a way that is consistent with both the statutory language and the intent of its drafters and in a manner that also provides exporters with an efficient and expedited process for engaging in authorized exports of agricultural commodities, medicine, and medical devices. Following this approach, OFAC is applying the licensing procedures required by section 906 of the TSRA to all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran that are within the current scope of OFAC's licensing jurisdiction. Similarly, OFAC is applying this licensing procedure to cover exports to the governments of Sudan, Libya, and Iran, any entities in these countries, and individuals in these countries, as well as to persons in third countries purchasing specifically for resale to any of the foregoing.

Cuban Assets Control Regulations. This rule implements the TSRA with respect to the Cuban Assets Control Regulations, 31 CFR part 515 (the ''CACR''), in the following ways:

With respect to exports from the United States to Cuba, § 515.533 of the CACR already provides a general license for transactions incident to exportations that are licensed or otherwise authorized by the Department of Commerce. As was the case prior to enactment of the TSRA, exporters seeking to export items from the United States to Cuba should seek authorization from the Commerce Department, which is also amending its regulations to implement the TSRA.

OFAC is amending § 515.533 to clarify that reexports of U.S.-origin items by persons subject to U.S. jurisdiction are also covered by this general license. Thus, overseas persons subject to U.S. jurisdiction that wish to reexport U.S.-origin items to Cuba are authorized to do so provided the reexport is licensed or otherwise authorized by the Commerce Department.

OFAC is also amending § 515.533 to clarify the general restrictions on financing sales of licensed items to Cuba and to implement the special financing restrictions with respect to licensed agricultural sales to Cuba contained in Section 908(b) of the TSRA. The new language slightly expands the payment and financing terms that may be used in agricultural sales to Cuba from those that previously existed.

Although § 515.207 of the CACR prohibits the entry into U.S. ports by vessels engaged in Cuban commerce, § 515.550 already provides a waiver for those vessels engaged in trade with Cuba that is licensed or otherwise exempt. Thus, vessels carrying exports or reexports of agricultural commodities, medicine, or medical supplies that have been licensed or otherwise authorized by the Commerce Department will be permitted to enter U.S. ports, provided they have not carried unlicensed and non-exempt cargo or persons to or from Cuba and provided they are not currently carrying unauthorized goods in which Cuba or a

Cuban national has an interest. A short note referencing this waiver is added to the end of § 515.207, which contains the prohibition on vessel entry.

Section 1706(a)(1) of the Cuban Democracy Act of 1992, 106 Stat. 2575, prohibits the issuance of licenses authorizing U.S.-owned or controlled foreign firms to engage in transactions related to the exportation to Cuba of commodities produced outside of the United States. OFAC is amending the Note to § 515.559 to make clear that U.S.-owned or controlled foreign firms may, however, be authorized to engage in the reexport of U.S.-origin items to Cuba pursuant to § 515.533. Otherwise, the provisions of § 515.559 remain unchanged.

With respect to section 910(a) of the TSRA, which authorizes Cuba travel-related transactions regarding the commercial sale of agricultural commodities, § 515.533(e) of the CACR already states that specific licenses may be issued on a case-by-case basis authorizing Cuba travel-related transactions directly incident to marketing, sales negotiation, accompanied delivery, and servicing of exports and reexports that appear consistent with the export and reexport licensing policy of the Commerce Department. A prospective exporter does not need to obtain a license from the Commerce Department before applying for such a travel license provided that the proposed exports or reexports clearly fit within current Commerce licensing policy. Section 515.560(b) of the CACR is amended to implement section 910(b) of the TSRA.

Sudanese Sanctions Regulations (''SSR''), Libyan Sanctions Regulations (''LSR''), Iranian Transaction Regulations (''ITR''). With respect to the SSR, LSR, and ITR, this rule is intended to establish an expedited process for the issuance of the one-year license required by section 906 of the TSRA. This rule also is intended to clarify the agricultural commodities, medical devices, and medicines covered by the new licensing provisions in these regulations. The Department of Treasury's Office of Foreign Assets Control (''OFAC'') will put in place expedited procedures to respond to requests for licenses to export agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Exporters of all fertilizers, live horses, western red cedar, and medical devices require commodity classification from the Department of Commerce, Bureau of Export Administration (''BXA'') certifying that the product is EAR 99 included with the exporter's license request to OFAC. See, 15 CFR 748.3 for instructions for submitting commodity classifications. However, BXA will publish on its website at www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html a list of medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA commodity classification prior to submitting a license application to OFAC. When submitting a license request to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA commodity classification for those medical devices that BXA has classified as EAR99. BXA's website will also include a list of medicines that are not EAR 99 and, therefore, not eligible for exportation under these rules.

The expedited process will include, when appropriate, referral of the one-year license request to other government agencies for guidance in evaluating the request. If no government agency raises an objection to or concern with the application within nine business days from the date of any such referral, OFAC will issue the one-year license, provided that the request otherwise meets the requirements set forth in this rule. If any government agency raises an objection to the request within nine business days from the date of referral, OFAC will deny the request for the one-year license. If any government agency raises a concern short of an objection with the request within nine business days from the date of referral, OFAC will delay its response to the license request for no more than thirty additional days to allow for further review of the request.

The TSRA defines *agricultural commodities* by reference to the meaning given to that term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602). This definition includes food commodities, feed, fish, shellfish and fish products, beer, wine and spirits, soft drinks, livestock, fiber, including cotton, wool, and other fibers, tobacco and tobacco products, wood and wood products (including lumber and utility poles), seeds, and reproductive materials such as fertilized eggs, embryos, and semen. It also includes certain fertilizers and organic fertilizers that are not otherwise controlled. The term *agricultural commodities* does not include furniture made from wood, clothing manufactured from plant or animal materials, agricultural equipment (whether hand tools or motorized equipment), pesticides, insecticides, herbicides, or cosmetics (unless derived entirely from plant materials). Exporters may consult the Department of Agriculture website at http://www.fas.usda.gov for assistance in determining whether a particular item meets the definition of *agricultural commodities* under the Agricultural Trade Act. Although the definition of *agricultural commodities* under the TSRA does not include vitamins and minerals, food additives or supplements, or bottled drinking water, OFAC will include such items in the definition of *agricultural commodities* for the purposes of this rule. An Official Commodity Classification of EAR 99 obtained from BXA is required to be submitted with the exporter's request to OFAC for a one-year license to export to Sudan, Libya, or Iran fertilizers, live horses, or western red cedar. An Official Commodity Classification from BXA *is not* required to be submitted with the exporter's request for a one-year license to export to Sudan, Libya, or Iran any other agricultural commodity. *See,* 15 CFR 745.3 for instructions for obtaining an Official Commodity Classification of EAR 99 from BXA.

The TSRA defines the terms *medicine* and *medical device* by adopting the definitions of drug and device set forth in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). These definitions include prescription medicines and over-the-counter medicines for humans and animals that are classified as EAR 99. They also include medical supplies, instruments, equipment, and equipped ambulances that are so classified. They do not include general-purpose furniture and equipment (such as desks, tables, lamps, and office computers) used in medical offices and waiting rooms. Exporters may consult with the Food and Drug Administration for assistance in determining whether a particular item meets the definition of drug or device under the Federal Food, Drug, and Cosmetic Act. Although most medicines and medical devices are classified under the Export Administration Regulations, 15 CFR part 774, as EAR 99, certain vaccines, biological and chemical products, medical devices and parts for such devices are listed on the CCL and are not eligible for export under this rule. Exporters must have an Official Commodity Classification of EAR 99 from BXA for all medical devices (including supplies) prior to submitting a license request to OFAC, unless the item is specifically listed on BXA's website at *www.bxa.doc.gov/Regulations/TradeSanctionsReform*

ExportEnhancementAct. This list identifies those medical supplies, such as syringes, bandages, gauze and similar items, that *do not* require BXA classification prior to submitting a license application to OFAC. When submitting a license request to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medical supply is listed on the BXA medical supply list on BXA's website. Otherwise, exporters must provide OFAC with a copy of the BXA Official Commodity Classification of EAR 99 for those medical devices not listed on the BXA website. *See,* 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

In addition, BXA has identified on its website a list of medicines that are on the CCL and not eligible for OFAC's expedited review procedures. When submitting a license application to OFAC under its expedited review procedures, exporters must indicate to OFAC that their medicine is not on the BXA medicine list on BXA's website, in other words, that it is classified as EAR 99. If exporters are unsure of whether their medicine is on the CCL, they should seek an Official Commodity Classification from BXA confirming that their medicine is classified as EAR99 prior to submitting a license request to OFAC under its expedited review procedures. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

Sections 538.523, 550.569, and 560.530 set forth procedures and requirements for requesting and obtaining these one-year licenses. Incomplete requests will be returned to the requestor without action and without prejudice.

These amendments to the SSR, LSR, and ITR also grant by general license the authority for sellers to respond to public tenders on an executory basis, negotiate and sign executory contracts, and make necessary shipping and financing arrangements, not otherwise specifically prohibited by Chapter V of 31 CFR, for the exportation to Libya and the exportation or reexportation to Sudan and Iran of agricultural commodities, medicine, and medical devices. Before the actual exportation to Libya or exportation or reexportation to Sudan or Iran takes place, prospective exporters must obtain a one-year license issued by the Department of the Treasury upon a determination that such exports are covered by the TSRA and are not exports to any entity within Sudan, Libya, or Iran promoting international terrorism.

Specific licenses issued prior to the effective date of this rule authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or the first anniversary of the effective date of this rule, whichever comes first. However, after the effective date of this rule, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this new rule.

Specific licenses issued prior to the effective date of this rule authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to the effective date of this rule pursuant to the license. As of the effective date of this rule, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this new rule.

Nothing in this rule, however, affects prohibitions on the exportation of any agricultural commodity, medicine, or medical device listed on the CCL. Moreover, nothing in this rule affects prohibitions on the sale or supply of U.S. equipment, technology, or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices. This rule does not affect U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

This rule amends the SSR, LSR, and ITR in the following ways:

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations implement section 906 of the Act by amending current sanctions against Sudan, Libya, and Iran to require that all exports of covered agricultural products, medicine, and medical devices to the governments of these countries or any entities in these countries be authorized by one-year licenses issued by the Department of the Treasury. These one-year licenses will authorize the exporter to engage in the exportation or reexportation of the licensed products for up to one year from the date of signing of any contract that is entered into during the one-year period of the license.

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations further implement section 906 of the Act by providing exporters a general license to engage in certain transactions relating to the sale and exportation of covered items to Sudan, Libya, or Iran prior to obtaining the one-year license, such as responding to public tenders on an executory basis, negotiating and signing executory contracts or other agreements capable of acceptance, making shipping arrangements, obtaining insurance, and arranging financing, to the extent not otherwise prohibited by Chapter V of 31 CFR. The one-year licenses will also authorize the performance of executory contracts entered into pursuant to the general license. The amendments specify that any executory contracts entered into prior to obtaining the one-year license will be deemed to have been entered into on the date the one-year license is issued for the purpose of determining the beginning of the 12-month period during which exports may be shipped.

The amendments to §§ 538.523, 550.569, and 560.530 of these regulations also implement section 906 of the Act by providing procedures for requesting, and for the issuance of, the one-year licenses.

Sections 538.526, 550.572, and 560.533 are amended to extend the general license for U.S. persons to broker sales of bulk agricultural commodities by U.S. persons to include the provision of brokerage services on behalf of U.S. persons for sales of all agricultural commodities, medicines, and medical devices as defined by §§ 538.523, 550.569, and 560.530.

Clarifying amendments are made to §§ 538.205, 538.211, 538.405, 550.306, 550.318, 550.405, and 560.405.

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 10, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after

the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason, and it will return such submission to the originator without considering them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available, not sooner than October 10, 2001 and may be obtained from OFAC's website (http://www.treas.gov/ofac). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW Washington, DC 20220, Attn: Merete Evans.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget (''OMB'') under control number 1505–0164. 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 control number.

List of Subjects

31 CFR Part 515

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Cuba, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Sudan, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Libya, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Drugs, Exports, Foods, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR chapter V, parts 515, 538, 550, and 560 are amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 515 to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Amend § 515.207 by adding a note to the end of the section to read as follows:

§ 515.207 Entry of vessels engaged in trade with Cuba.

* * * * *

Note to § 515.207: For the waiver of the prohibitions contained in this section for certain vessels engaged in licensed or exempt trade with Cuba, see § 515.550.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Revise the heading and paragraphs (a) and (e) and remove paragraph (f) of § 515.533 to read as follow:

§ 515.533 Transactions incident to exportations from the United States and reexportations of U.S.-origin items to Cuba.

(a) All transactions ordinarily incident to the exportation of goods, wares, and merchandise from the United States, or the reexportation of U.S.-origin goods, wares, and merchandise from a third country, to any person within Cuba are hereby authorized, provided the following terms and conditions are complied with:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (see the Export Administration Regulations, 15 CFR 730–774); and

(2) Only the following payment or financing terms may be used:

(i) Payment of cash in advance;

(ii) For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, United States citizen, United States permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a United States banking institution; or

(iii) For all other authorized sales, financing by a banking institution located in a third country provided the banking institution is not a designated national or a person subject to the jurisdiction of the United States. Such financing may be confirmed or advised by a United States banking institution.

* * * * *

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports or reexports that are consistent with the export or reexport licensing policy of the Department of Commerce.

* * * * *

4. Revise the heading of § 515.559 and the Note to § 515.559 to read as follows:

§ 515.559 Certain transactions by U.S.-owned or controlled foreign firms with Cuba.

* * * * *

Note to § 515.559: For reexportation of U.S.-origin goods, wares, or merchandise by U.S.-owned or controlled foreign firms, see § 515.533. Transactions by U.S.-owned or controlled foreign firms directly incident to the exportation of information or informational materials or the donation of

food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See § 515.206. For the waiver of the prohibitions contained in § 515.207 with respect to vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see § 515.550.

5. Revise paragraph (b) of § 515.560 to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to the jurisdiction of the United States.

* * * * *

(b) Effective October 28, 2000, no specific licenses will be issued authorizing the travel-related transactions in paragraph (c) of this section in connection with activities other than those referenced in paragraph (a) of this section.

* * * * *

PART 538—SUDANESE SANCTIONS REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 538 to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989; 3 CFR, 1997 Comp., p. 230.

Subpart B—Prohibitions

2. Revise § 538.205 to read as follows:

§ 538.205 Prohibited exportation and reexportation of goods, technology, or services to Sudan.

Except as otherwise authorized, the exportation or reexportation, directly or indirectly, to Sudan of any goods, technology (including technical data, software, or other information) or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency, is prohibited.

3. Amend § 538.211 to redesignate paragraphs (b) through (e) as paragraphs (c) through (f) and to add a new paragraph (b) to read as follows:

§ 538.211 Exempt transactions.

* * * * *

(b) *Humanitarian donations.* The prohibitions of this part do not apply to donations by United States persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

* * * * *

Subpart D—Interpretations

4. Amend § 538.405 by revising paragraph (b) to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

5. Revise § 538.523 to read as follows:

§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, any entity in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Sudan promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation or reexportation of covered products.*

(1) The making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of agricultural commodities, medicine, or medical devices to the Government of Sudan, entities in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Sudan, entities in Sudan, individuals in Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names, mailing addresses, and if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Sudan, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration (''BXA''), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as

syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/Trade Sanctions ReformExport EnhancementAct.html.* Medical supplies that are specifically listed on BXA's website do not require an Official Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 et seq.; or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or to any other activity prohibited by this chapter that is not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Sudan as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

§ 538.524 [removed and reserved]

6. Remove and reserve § 538.524.

7. Amend § 538.525 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities, medicine, and medical equipment.

* * * * *

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523 or § 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Sudan may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

8. Amend § 538.526 to revise the heading and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 538.526 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 538.523.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case

basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Sudanese persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Sudan, entities in Sudan or individuals in Sudan. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to § 538.523;

Note to paragraph (b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 538.523(c).

* * * * *

PART 550—LIBYAN SANCTIONS REGULATIONS

Authority

1. Revise the authority citation for 31 CFR part 550 to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12543, 51 FR 875; 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319 3 CFR, 1992 Comp., p. 294.

Subpart C—Definitions

2. Revise § 550.206 to read as follows:

§ 550.306 Person.

The term *person* means an individual or entity.

3. Revise § 550.308 to read as follows:

§ 550.308 United States person.

The term *United States person,* or as abbreviated, *U.S. person,* means any United States citizen, permanent resident alien, juridical person authorized under the laws of the United States (including foreign branches), or any person in the United States.

4. Revise § 550.318 to read as follows:

§ 550.318 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

Subpart D—Interpretations

5. Amend § 550.405 to revise paragraph (b) to read as follows:

§ 550.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Libya not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

6. Revise § 550.569 to read as follows:

§ 550.569 Commercial sales and exportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 550), medicine, or medical devices to the Government of Libya, any entity in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Libya promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation of covered products.*

(1) The making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 550.571) for the exportation of agricultural commodities, medicine, and medical devices to the Government of Libya, entities in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation of agricultural commodities, medicine, and medical devices to the Government of Libya, entities in Libya, individuals in Libya, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names and addresses and, if available, fax and phone numbers of all parties with an interest in the transaction. If the goods are being exported to a purchasing agent in Libya, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration (''BXA''), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/TradeSanctionsReformExportEnhancementAct.html.* Medical supplies that are specifically listed on BXA's website do not require an Official

Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Libya as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term *medicine* has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term *medical device* has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

7. Remove and reserve § 550.570.

§ 550.570 [Removed and reserved]

8. Amend § 550.571 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 550.571 Payment for and financing of exports of agricultural commodities, medicine, and medical equipment.

* * * * *

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 550.569 or § 550.572 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Libya may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

9. Amend § 550.572 to revise the heading and paragraphs (a), (b) introductory text, (b)(1) and (b)(2) to read as follows:

§ 550.572 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 550.569.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Libyan persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Libya, entities in Libya or individuals in

Libya. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 550;

(2) Are to purchasers permitted pursuant to § 550.569;

Note to paragraph (b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 550.569(c).

* * * * *

10. Revise § 550.573 to read as follows:

§ 550.573 Travel transactions in connection with the exportation of agricultural commodities, medicine, and medical devices.

Travel transactions to, from, and within Libya for the sole purpose of engaging in transactions authorized by § 550.569 are authorized. Travel transactions related to installation or servicing of medical equipment sold pursuant to § 550.569 must be authorized by specific license. *See* § 501.801(b) of this chapter for specific licensing procedures.

Note to § 550.573: U.S. passports must be validated by the U.S. Department of State for travel to Libya.

PART 560—IRAN TRANSACTION REGULATIONS

Authority

1. Revise the authority citation for part 560 to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CRF, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—Interpretations

2. Amend § 560.405 to revise paragraph (b) to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there.

* * * * *

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

3. Amend § 560.520 to revise the heading to read as follows:

§ 560.520 Exportation of agricultural commodities on contracts entered into prior to May 7, 1995.

* * * * *

4. Revise § 560.530 to read as follows:

§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Iran promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation and reexportation of covered products.*

(1) The making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, email addresses).

(3) The names, mailing addresses, and, if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Iran, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Export Administration (''BXA''), certifying that the product is EAR 99 is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BXA's website, *www.bxa.doc.gov/Regulations/Trade Sanctions*

ReformExport EnhancementAct.html. Medical supplies that are specifically listed on BXA's website do not require an Official Commodity Classification of EAR 99 from BXA. BXA will also provide a list on its website of medicines that are ineligible for a one-year license under these procedures. If an exporter is uncertain whether the medicine to be exported is eligible, they should seek an Official Commodity Classification of EAR 99 from BXA and submit a copy to OFAC. See, 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BXA.

(d) *Limitations.*

(1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Transition period.*

(1) Specific licenses issued prior to July 26, 2001 authorizing the performance of executory contracts for the sale of agricultural commodities, medicine, or medical equipment shall remain in effect until the expiration date specified in the license or July 26, 2002, whichever comes first. However, after July 26, 2001, new contracts for the exportation of agricultural commodities, medicine, or medical devices may be entered into only pursuant to the terms of, and as authorized by, this new part.

(2) Specific licenses issued prior to July 26, 2001 authorizing the sale and exportation or reexportation of bulk agricultural commodities listed in Appendix A to 31 CFR parts 538 and 550 and Appendix B to 31 CFR part 560 shall remain in effect solely to permit completion of performance of contracts already entered into prior to July 26, 2001 pursuant to the license. As of July 26, 2001, new contracts for the exportation of bulk agricultural commodities may be entered into only pursuant to the terms of, and as authorized by, this part.

§ 560.531 [Removed and reserved]

5. Remove and reserve § 560.531.

6. Amend § 560.532 to revise the heading and paragraph (d) and to add a new paragraph (e) to read as follows:

§ 560.532 Payment for and financing of exports and reexports of commercial commodities, medicine, and medical devices.

* * * * *

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530 or § 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. *See* § 560.516(b).

(e) Notwithstanding any other provision of this part, no commercial exportation to Iran may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

7. Amend § 560.533 to revise the heading and paragraphs (a), (b) introductory text, (b)(1), and (b)(2) to read as follows:

§ 560.533 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 560.530.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Iranian persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Iran, entities in Iran or individuals in Iran. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to § 560.530;

* * * * *

Note to § 560.533(b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 560.530(c).

Dated: June 6, 2001.

Loren L. Dohm,

Acting Director, Office of Foreign Assets Control.

Approved: June 14, 2001.

James F. Sloan,

Acting Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–17466 Filed 7–10–01; 11:02 am]

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Vol. 66, No. 134

Thursday, July 12, 2001

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FEDERAL REGISTER PAGES AND DATE, JULY

34783–35076 2
35077–35364 3
35365–35528 5
35529–35750 6
35751–35888 9
35889–36144 10
36145–36440 11
36441–36694 12

CFR PARTS AFFECTED DURING JULY

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.

3 CFR

Proclamations:
7453 35361
7454 35365
Executive Orders:
13129 (See Notice of June 30, 2001 35363
13220 35527
Administrative Orders:
Notices:
Notice of June 30, 2001 35363

5 CFR

Proposed Rules:
1650 36494

7 CFR

800 35751
930 .....35889, 35891
Proposed Rules:
274 36495

9 CFR

Proposed Rules:
301 35112
303 35112
317 35112
318 35112
319 35112
320 35112
325 35112
331 35112
381 35112
417 35112
430 35112

10 CFR

150 35529
170 35529
171 35529
600 34783
Proposed Rules:
20 36502

12 CFR

1 34784
5 34792
7 34784
9 34792
23 34784
201 35529
Proposed Rules:
7 34855

14 CFR

39 .....34798, 34800, 34802, 35077, 35371, 35530, 35532, 35533, 35535, 35536, 35538, 35896, 36145, 36146, 36149, 36150, 36152, 36154, 36441, 36443, 36445, 36447, 36449, 36450, 36452, 36453, 36455, 36456
71 .....34807, 35080, 35540
73 34808
Proposed Rules:
39 .....35912, 36215, 36509, 36513, 36516, 36520
71 .....35914, 35916, 35917

15 CFR

303 34810
740 36676
742 36676
746 36676
772 36676
774 36676

16 CFR

801 35541
802 35541
803 35541

17 CFR

200 35836
211 36457
240 35836
270 36156
274 36156
Proposed Rules:
41 .....34864, 36218
240 34864

19 CFR

24 34813

21 CFR

129 35373
165 35373
510 36162
520 .....35755, 35898
522 35756
556 35544
558 36162

22 CFR

124 35899
125 35899
126 35899

24 CFR

27 35846
207 35070
290 35846
598 35850
599 35850

26 CFR

Proposed Rules:
1 35112

28 CFR

16 35374

Proposed Rules:
25 35567

29 CFR

2520 ....34994, 36368
2560 35886
Proposed Rules:
1904 35113

30 CFR

57 35518
Proposed Rules:
57 35521

31 CFR

515 36683
538 36683
550 36683
560 36683

32 CFR

Proposed Rules:
808 36523

33 CFR

100 ....34819, 34821, 34823, 34825, 34826, 34828
117 ....34829, 35901, 36162, 36163, 36164, 36165, 36466
165 ....34829, 34831, 34832, 34834, 34836, 34838, 34839, 34841, 34842, 34844, 34846, 34848, 35080, 35544, 35756, 35758, 36165, 36167, 36168
Proposed Rules:
117 ....36525, 36527, 36529
151 36530
153 36530
164 36223

36 CFR

51 35082
Proposed Rules:
219 35918
294 35918

37 CFR

Proposed Rules:
1 35763

38 CFR

17 36467
20 35902

39 CFR

Proposed Rules:
111 36224

40 CFR

52 ....35374, 35546, 35903, 35906, 36035, 36170
60 36473
62 35546
63 ....35083, 35087, 36173
81 ....34994, 36476
180 ....36477, 36481
261 35379
264 35087
300 ....34849, 35385, 35547
Proposed Rules:
9 35572
52 ....34864, 34878, 35573, 35920, 36226, 36370, 36532, 36542, 36656
60 36547
61 35115
63 ....35115, 35124, 35126, 35326, 36228
70 34901
122 35572
123 35572
124 35572
125 35572
180 35921
264 ....35124, 35126
265 35126
266 35126
270 35126
300 ....34906, 35395
450 35576

42 CFR

Proposed Rules:
416 35395
482 35395
485 35395

45 CFR

Proposed Rules:
46 35576

46 CFR

310 36175
401 36484
Proposed Rules:
4 36530
25 36223
27 36223

47 CFR

1 ....35387, 36177
36 35107
53 36206
73 ....35107, 35387, 35388, 35760
101 35107
Proposed Rules:
2 35399
25 35399
64 35765
73 ....35406, 35407, 35767, 35768, 35925
101 35399

48 CFR

1804 36490
1852 36490

49 CFR

Proposed Rules:
171 35155
571 35177
575 35179

50 CFR

17 ....35547, 36078
300 36208
600 35388
622 35761
648 ....35566, 36208
660 ....35388, 36212
679 ....35761, 35911, 36213, 36492
Proposed Rules:
17 ....35580, 36229
32 35193
216 35209
223 35407
648 36246
679 34852

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 JULY 12, 2001

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Tier 2/gasoline sulfur regulations; published 4-13-01

Air quality implementation plans; approval and promulgation; various States:
- New Jersey; published 6-12-01

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aminoethoxyvinylglycine; published 7-12-01

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Satellite communications—
  - Blanket licensing for small aperture terminals in the C-Band and routine licensing of 3.7 meter transmit and receive stations at C-Band; published 6-12-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
- Unclassified information technology resources; security requirements; published 7-12-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 6-27-01
- Dassault; published 6-27-01
- Empresa Brasileira de Aeronautica S.A.; published 6-27-01
- Eurocopter France; published 6-27-01

Class D airspace; published 2-20-01

Class E airspace; published 2-26-01

Class E airspace; correction; published 5-29-01

IFR altitudes; published 6-5-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; comments due by 7-16-01; published 5-15-01

AGRICULTURE DEPARTMENT

Forest Service

National Forest System land and resource management planning; comments due by 7-16-01; published 5-17-01

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Ground or chopped meat and poultry products and single-ingredient products; nutrition labeling; comments due by 7-17-01; published 4-20-01

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Grants:
- Rural Business Enterprise and Television Demonstration Programs; comments due by 7-16-01; published 5-16-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Smalltooth sawfish; comments due by 7-16-01; published 4-16-01

Fishery conservation and management:
- Caribbean, Gulf, and South Alantic fisheries—
  - Gulf of Mexico reef fish, and Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-16-01; published 6-14-01
- West Coast States and Western Pacific fisheries—
  - West Coast salmon; comments due by 7-16-01; published 6-29-01

International fisheries regulations:
- Pacific halibut—
  - Catch sharing plan; comments due by 7-16-01; published 6-14-01

Marine mammals:
- Incidental taking—
  - Sea turtle conservation; handling and resuscitation during scientific research or fishing activities; comments due by 7-18-01; published 6-18-01

Ocean and coastal resource management:
- Marine sanctuaries—
  - Florida Keys National Marine Sanctuary, FL; comments due by 7-20-01; published 6-8-01

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Electronic commerce in Federal procurement; comments due by 7-16-01; published 5-16-01
- Nondisplacement of qualified workers under certain contracts; EO revocation; comments due by 7-16-01; published 5-16-01
- Preservation of open competition and government neutrality towards government contractors' labor relations; comments due by 7-16-01; published 5-16-01

ENERGY DEPARTMENT

Privacy Act; implementation; comments due by 7-16-01; published 6-14-01

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Alaska; comments due by 7-20-01; published 6-20-01
- Arizona; comments due by 7-18-01; published 6-18-01
- Delaware; comments due by 7-16-01; published 6-14-01
- Montana; comments due by 7-16-01; published 6-15-01

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Colorado; comments due by 7-16-01; published 6-15-01
- Colorado; correction; comments due by 7-16-01; published 7-2-01

Air quality planning purposes; designation of areas:
- Washington; comments due by 7-16-01; published 6-15-01

Hazardous waste program authorizations:
- California; comments due by 7-20-01; published 6-20-01

Hazardous waste:
- State underground storage tank program approvals—
  - North Carolina; comments due by 7-16-01; published 6-15-01

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Incumbent local exchange carriers—
  - Accounting and ARMIS reporting requirements; comprehensive review; biennial regulatory review (Phase 2); comments due by 7-16-01; published 6-26-01

Radio services, special:
- Personal radio services—
  - Stolen Vehicle Recovery Systems (SVRSs) authorized duty cycle; comments due by 7-16-01; published 6-12-01

Radio stations; table of assignments:
- Georgia; comments due by 7-16-01; published 6-6-01
- Kentucky and Michigan; comments due by 7-16-01; published 6-12-01
- Washington; comments due by 7-16-01; published 6-6-01
- Wyoming; comments due by 7-16-01; published 6-12-01

FEDERAL DEPOSIT INSURANCE CORPORATION

Federal Deposit Insurance Act:
- Business of receiving deposits other than trust funds; comments due by 7-18-01; published 4-19-01

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Electronic commerce in Federal procurement; comments due by 7-16-01; published 5-16-01
- Nondisplacement of qualified workers under certain contracts; EO revocation; comments due by 7-16-01; published 5-16-01
- Preservation of open competition and

governments neutralty towards government contractors' labor relations; comments due by 7-16-01; published 5-16-01

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

West Virginia; comments due by 7-20-01; published 6-20-01

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Asylum procedures—

Syrian nationals; status adjustment to lawful permanent residents; comments due by 7-16-01; published 5-17-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Electronic commerce in Federal procurement; comments due by 7-16-01; published 5-16-01

Preservation of open competition and government neutrality towards government contractors' labor relations; comments due by 7-16-01; published 5-16-01

NUCLEAR REGULATORY COMMISSION

Practice and procedure:

Adjudicatory process changes; comments due by 7-16-01; published 4-16-01

SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934; general rules and regulations:

Broker and dealer definitions; bank, savings association, and savings bank exemptions; comments due by 7-17-01; published 5-18-01

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:

Procedures; revision—

Comments requested; comments due by 7-16-01; published 6-14-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 7-16-01; published 5-31-01

General Electric Co.; comments due by 7-16-01; published 5-16-01

McDonnell Douglas; comments due by 7-20-01; published 6-5-01

Raytheon; comments due by 7-20-01; published 6-5-01

Airworthiness standards:

Transport category airplanes—

Airspeed indicating systems requirements; comments due by 7-16-01; published 5-15-01

Design and installation of electronic equipment; comments due by 7-16-01; published 5-15-01

Electrical cables; comments due by 7-16-01; published 5-15-01

Electrical installation, nickel cadmium battery installation, and nickel cadmium battery storage; comments due by 7-16-01; published 5-17-01

Fire protection of electrical system components; comments due by 7-16-01; published 5-15-01

Class D airspace; comments due by 7-20-01; published 6-5-01

Class E airspace; comments due by 7-18-01; published 6-18-01

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Tax-exempt bonds issued for output facilities; guidance to State and local governments; cross-reference; comments due by 7-18-01; published 1-18-01

LIST OF PUBLIC LAWS

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S. 657/P.L. 107–19

To authorize funding for the National 4-H Program Centennial Initiative. (July 10, 2001; 115 Stat. 153)

Last List July 9, 2001

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