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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–346–AD; Amendment 39–12333; AD 2001–14–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100 and –200 series airplanes, that requires repetitive inspections for cracking of the station 800 frame assembly, and repair, if necessary. The actions specified by this AD are intended to find and fix fatigue cracks that could extend and fully sever the frame, which could result in development of skin cracks that could lead to rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 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 certain Boeing Model 747–100 and –200 series airplanes was published in the **Federal Register** on April 19, 2001 (66 FR 20114). That action proposed to require repetitive inspections for cracking of the station 800 frame assembly, and repair, if necessary.

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 258 airplanes of the affected design in the worldwide fleet. The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take up to 14 work hours 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 as much as $116,760, or $840 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:

2001–14–22 Boeing: Amendment 39–12333. Docket 2000–NM–346–AD.

Applicability: Model 747–100 and –200 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000, certificated in any category.

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

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracks of the station 800 frame assembly that could extend and fully sever the frame, which could result in development of skin cracks that could lead to rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Do detailed visual, surface high frequency eddy current (HFEC), and open hole HFEC inspections, as applicable, for cracking of the station 800 frame assembly (including the inner chord strap, angles, and exposed web) between stringers 14 and 18, according to Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000. Except as provided by paragraph (b) of this AD, do the inspection at the applicable time specified in Table 1 below, and repeat the inspections thereafter at least every 3,000 flight cycles: Table 1 is as follows:

TABLE 1.—COMPLIANCE TIMES

Total flight cycles as of the effective date of this AD	Do the inspection in paragraph (a) at this time
(1) Fewer than 19,000.	Before the accumulation of 19,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever comes later.
(2) 19,000 or more but 24,250 or fewer.	Within 1,500 flight cycles or 12 months after the effective date of this AD, whichever comes first.
(3) 24,251 or more.	Within 750 flight cycles or 12 months after the effective date of this AD, whichever comes first.

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.''

Adjustments to Compliance Time: Cabin Differential Pressure

(b) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraph (a) of this AD, the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane: NO fleet-averaging of cabin pressure is allowed.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) of this AD, before further flight, repair the cracking according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to 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

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

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

Incorporation by Reference

(f) Except as provided by paragraphs (b) and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on August 30, 2001.

Issued in Renton, Washington, on July 12, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18019 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–276–AD; Amendment 39–12329; AD 2001–14–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections to detect fatigue cracking of the vertical beam webs and chords of the nose wheel well (NWW) and of the inner chord and web of the fuselage frames at body station (BS) 300 and BS 320, and repair, if necessary. This amendment expands the applicability of the existing AD to include additional airplanes, and adds new requirements for repetitive inspections to detect fatigue cracking of the NWW vertical beam webs and frames from BS 260 to BS 320, and follow-on actions, if necessary, which would end the currently required inspections for airplanes subject to them. This amendment also provides terminating action for the new repetitive inspections. The actions specified by this AD are intended to detect and correct fatigue cracking of the NWW vertical beam webs and frames, which could result in collapse of the NWW pressure bulkhead and subsequent rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 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) by superseding AD 96–26–04, amendment 39–9867 (61 FR 69026, December 31, 1996), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on March 14, 2001 (66 FR 14867). The action proposed to continue to require inspections to detect fatigue cracking of the vertical beam webs and chords of the nose wheel well and of the inner chord and web of the fuselage frames at body station (BS) 300 and BS 320, and repair, if necessary. The action also proposed to expand the applicability of the existing AD to include additional airplanes, and add new requirements for repetitive inspections to detect fatigue cracking of the nose wheel well vertical beam webs and frames from BS 260 to BS 320, and follow-on actions, if necessary, which would end currently required inspections for airplanes subject to them. The action also provides terminating action for the new repetitive inspections.

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 from a single commenter.

Reference Applicable Revision Level of Service Bulletin

Table 3 of the proposed AD contains the compliance schedule for accomplishment of the inspections in paragraph (c) of the proposed AD for previously inspected airplanes subject to Procedure 3, 4, or 6 of Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000. The commenter requests that the FAA revise the column in Table 3 that contains the compliance time for the initial inspection of the proposed AD. The commenter asks that the column headings specifically identify Boeing Service Bulletin, Revision 7, dated March 13, 1997, as the correct source for the definitions of Options 1 and 2 as specified in those columns. The commenter believes that the FAA intended to reference Revision 7 of the service bulletin in this case because that is the revision being used by most operators.

The FAA partially concurs with the commenter's request. We find that it's necessary to revise Table 3 in this final rule, but the commenter's suggested remedy does not fully address the issue because operators could possibly be using issues of the service bulletin other than Revision 7. Furthermore, we have determined that the definitions of Option 1 and Option 2 have varied between revisions of the service bulletin. Therefore, we find it necessary to cite the original issue and Revisions 1 through 7 of the service bulletin, as well as to remove the references to Options 1 and 2 entirely, and instead specify the method of inspections included in those options. Table 3 of this final rule has been revised accordingly.

Extend Compliance Time for Paragraph (f)

The commenter requests that the FAA extend the compliance time in paragraph (f) of the proposed AD for airplanes on which cracking was repaired prior to the effective date of this AD according to paragraph (a)(2) of the proposed AD. The commenter states that, if these airplanes have not been inspected per paragraph (a) of the proposed AD within the last 100 flight cycles before the effective date of this AD, the airplanes must be inspected per paragraph (c) of the proposed AD within 100 flight cycles after the effective date of this AD. The commenter states that if these same airplanes had not been repaired per paragraph (a)(2) of the proposed AD, they would have been allowed to wait until 500 flight cycles after the effective date of this AD to do the inspections in paragraph (c). The commenter states that its experience in the subject area shows that repairs per paragraph (a)(2) of the proposed AD should be significantly larger and stronger than published repairs per the Boeing 747 Structural Repair Manual, which should eliminate the need for these airplanes to be inspected within 100 flight cycles after the effective date of this AD.

The FAA concurs with the intent of the commenter's request, though not with its rationale. We do not concur that an airplane not repaired per paragraph (a)(2) of this AD would have a compliance time of 500 flight cycles after the effective date of this AD. An unrepaired airplane would be subject to a compliance time of 100 or 500 flight cycles SINCE LAST INSPECTION (not since the effective date of this AD), depending on the method used for the last inspection.

As explained in the preamble of the proposed AD, we intend paragraph (f) to apply to airplanes that may not have been inspected following repairs. Certain airplanes could have been repaired as early as 1997, with no inspections having been accomplished since that time. The compliance time of 100 flight cycles after the effective date of this AD in paragraph (f) of this AD ensures that all of these airplanes will be inspected promptly.

However, the FAA does concur that paragraph (f) of the proposed AD could require certain airplanes—i.e., those inspected by internal detailed visual inspection and high frequency eddy current (HFEC) inspection, which allows a 1,500-flight-cycle repeat interval—to be inspected unnecessarily within 100 flight cycles after the effective date of this AD. Therefore, the FAA has revised paragraph (f) of this final rule to provide an extended compliance time of 500 flight cycles after the effective date of this AD for airplanes on which an internal detailed visual and HFEC inspection has been done according to Boeing Service Bulletin 747–53–2293 within the last 1,500 flight cycles before the effective date of this AD.

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 562 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 179 airplanes of U.S. registry will be affected by this AD.

For affected airplanes, the inspections that are currently required by AD 96–26–04 take approximately 24 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates the cost impact of the currently required actions to be $1,440 per affected airplane, per inspection cycle.

The new inspections that are required in this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates the cost impact of these new actions on U.S. operators to be $42,960, or $240 per airplane, per inspection cycle.

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 removing amendment 39–9867 (61 FR 69026, December 31, 1996), and by adding a new airworthiness directive (AD), amendment 39–12329, to read as follows:

2001–14–18 Boeing: Amendment 39–12329. Docket 2000–NM–276–AD. Supersedes AD 96–26–04, Amendment 39–9867.

Applicability: Model 747 series airplanes, line numbers 1 through 685 inclusive, certificated in any category; except as excluded in the table below:

AIRPLANES EXCLUDED FROM APPLICABILITY OF THIS AD

Airplane group (as listed in Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000)	Area 4 modified per Boeing Service Bulletin (BSB) 747–53–2293?	Zone 1 modified per BSB 747–53–2272?	Excepted from this AD?
1–11	Yes	Yes	Yes.
1–11	No	Yes	No.
1–11	Yes	No	No.
12–13	Yes	N/A	Yes.
12–13	No	N/A	No.

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 (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of nose wheel well (NWW) vertical beams and frames, which could result in collapse of the NWW pressure bulkhead and subsequent rapid decompression of the airplane, accomplish the following:

Restatement of Requirements of AD 96–26–04

Repetitive Inspections of Frame Inner Chord and Web and Repair

(a) For airplanes with line numbers 1 through 678 inclusive on which the Section 41 frame replacement in zone 1 specified in Boeing Service Bulletin 747–53–2272 has not been accomplished: Prior to the accumulation of 10,000 total flight cycles, or within 50 flight cycles after January 6, 1997 (the effective date of AD 96–26–04, amendment 39–9867), whichever occurs later, perform a detailed visual inspection to detect fatigue cracking of the inner chord and web of the left side and right side of body station (BS) 300 and BS 320 fuselage frames from the NWW side panel outboard to stringer 39, in accordance with normal maintenance practices. Pay particular attention to the area where the NWW vertical beam inner chord interfaces with the fuselage frame.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 100 flight cycles, until paragraph (c) of this AD is done.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

One-Time Inspection of Vertical Beam Webs and Chords and Repair

(b) For airplanes with line numbers 1 through 678 inclusive on which the Section 41 frame replacement in zone 1 specified in Boeing Service Bulletin 747–53–2272 has not been accomplished: Prior to the accumulation of 10,000 total flight cycles, or within 50 flight cycles after January 6, 1997, whichever occurs later, perform a one-time detailed visual inspection to detect fatigue cracking of the left and right side vertical beam webs and chords of the NWW at BS 300 and BS 320, in accordance with normal maintenance procedures.

(1) If no cracking is detected, no further action is required by this paragraph.

(2) If any cracking is detected, prior to further flight, repair in accordance with 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 Manager's approval letter must specifically reference this AD.

New Requirements of this AD

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.''

Repetitive Inspections

(c) Do inspections to detect fatigue cracking of NWW vertical beam webs and frames, as applicable, from BS 260 to BS 320 (''Area 4''), per the applicable procedure shown in Table 1 of this AD and the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000. For affected airplanes, inspection per this paragraph ends the repetitive inspections required by paragraph (a). Table 1 follows:

TABLE 1.—DETERMINING THE APPLICABLE PROCEDURE

Airplane group	Area 4 inspected per the original issue or revisions 1 through 7 of BSB 747–53–2293?	Area 4 modified per BSB 747–53–2293?	Zone 1 modified per BSB 747–53–2272?	Applicable procedure and figures in service bulletin
1–11	No	No	No	Procedure 1; Figures 4 and 19, and Figure 10; as applicable.
1–11	No	No	Yes	Procedure 2; Figures 11 and 12.
1–11	Yes	No	No	Procedure 3; Figures 4 and 13, and Figures 10 and 14; as applicable.
1–11	Yes	No	Yes	Procedure 4; Figures 11 and 15.
1–11	No	Yes	No	Procedure 5; Figures 10, 16, and 17; as applicable.
1–11	Yes	Yes	No	Procedure 6; Figure 18; and Figure 10, 14 or 17; as applicable.
12–13	No	No	N/A	Procedure 2; Figures 11 and 12.
12–13	Yes	No	N/A	Procedure 4; Figures 11 and 15.

Repetitive Inspections: Compliance Schedule

(d) For all airplanes, do the inspection in paragraph (c) of this AD per the schedule in Table 2 or Table 3 of this AD, as applicable, except as provided by paragraph (f) of this AD. Thereafter, repeat the inspection at the interval specified in Table 2 or Table 3 of this AD, as applicable, until paragraph (h) of this AD is done. Tables 2 and 3 follow:

TABLE 2.—COMPLIANCE SCHEDULE—PROCEDURES 1, 2, AND 5

For airplanes subject to	Do the initial inspection before the latest of	Repeat the inspection in the service bulletin as follows:	
		If most recent inspection was per option 1, repeat at least every	If most recent inspection was per option 2, repeat at least every
Procedure 1	10,000 total flight cycles or 100 flight cycles after the last inspection per paragraph (a) of this AD.	1,500 flight cycles	100 flight cycles.
Procedure 2	10,000 total flight cycles or 1,500 500 flight cycles after the effective date of this AD.	1,500 flight cycles	500 flight cycles.
Procedure 5	10,000 total flight cycles or 500 flight cycles since modification of Area 4 in accordance with BSB 747–53–2293 or 100 flight cycles after the effective date of this AD.	1,500 flight cycles	100 flight cycles.

TABLE 3.—COMPLIANCE SCHEDULE—PROCEDURES 3, 4, AND 6

For airplanes subject to	Do the initial inspection as follows, as applicable:		Repeat the inspection in the service bulletin as follows:	
	If most recent inspection used both detailed visual and high frequency eddy current (HFEC) methods, per the original issue or Revisions 1 through 7 of BSB 747–53–2293, do the inspection:	If most recent inspection used only the detailed visual method, per the original issue or Revisions 1 through 7 of BSB 747–53–2293, do the inspection:	If most recent inspection was per Option 1, repeat at least every	If most recent inspection was per Option 2, repeat at least every
Procedure 3	Within 500 flight cycles since last inspection.	Within 100 flight cycles since last inspection.	1,500 flight cycles	100 flight cycles.
Procedure 4	Within 500 flight cycles since last inspection.	Within 100 flight cycles since last inspection.	1,500 flight cycles	500 flight cycles.
Procedure 6	Within 500 flight cycles since last inspection.	Within 100 flight cycles since last inspection.	1,500 flight cycles	100 flight cycles.

Exceptions to Inspections Per Paragraphs (a) and (b)

(e) For airplanes subject to paragraphs (a) and (b) of this AD: Airplanes inspected per paragraph (c) of this AD within the compliance time specified in paragraphs (a) and (b) of this AD are not required to be inspected per paragraphs (a) and (b) of this AD.

(f) For airplanes in Groups 1 through 11 on which cracking was repaired prior to the effective date of this AD per paragraph (a)(2) of this AD: If an inspection per paragraph (a) has not been done within the last 100 flight cycles before the effective date of this AD, do the inspection in paragraph (c) of this AD at the compliance time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) If internal detailed visual and HFEC inspections according to BSB 747–53–2293 have been done within the last 1,500 flight cycles before the effective date of this AD: Do the inspection within 500 flight cycles after the effective date of this AD.

(2) For airplanes not identified in paragraph (f)(1) of this AD: Do the inspection within 100 flight cycles after the effective date of this AD.

Corrective Actions

(g) If any cracking is found during any inspection required by paragraph (c) or (d) of this AD, prior to further flight, perform corrective actions, including secondary inspections to detect further cracking, in accordance with the applicable procedure in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000.

Optional Terminating Action

(h) Replacement of vertical beams and frames, as applicable, in accordance with the applicable procedure in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000, ends the requirements of this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 96–26–04, amendment 39–9867, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

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

(j) 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

(k) Except as specified in paragraphs (a) and (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2293, Revision 8, dated July 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on August 30, 2001.

Issued in Renton, Washington, on July 12, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18015 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12346; AD 2001–15–12]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes two airworthiness directives (AD's), 2000–22–01 and 2001–09–07, that both apply to Pratt and Whitney (PW) model PW4000 series turbofan engines. AD 2000–22–01 requires that operators limit the number of PW4000 engines equipped with the high pressure compressors (HPC) in the cutback stator (CBS) configuration to no more than one engine on each airplane, and prohibits the installation of engines with HPC modules in the CBS configuration after the effective date of that AD. AD 2001–09–07 requires that operators limit the number of engines with potentially reduced stability to no more than one engine on each airplane, and remove those engines before exceeding certain cyclic limits. Reports of HPC surges in PW4000 engines that have the HPC in the CBS configuration prompted those AD's.

This Amendment will limit the number of PW4000 engines with potentially reduced stability on each airplane by applying rules based on airplane and engine configuration, and require that engines that exceed HPC compressor cyclic limits based on cycles-since-overhaul (CSO) are removed from service. This AD will also limit the number of engines with HPC CBS configuration to one on each airplane, and will establish a minimum rebuild standard for engines that are returned to service. This Amendment is prompted by further analyses of compressor surges in PW4000 engines. The actions specified by this AD are intended to prevent multiple-engine power losses due to high pressure compressor (HPC) surge and to reduce the rate of single-engine surge events.

DATES: Effective August 10, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 24, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA has noted a growing number of take-off (T/O) surge events in Pratt and Whitney PW4000 Series turbofan engines. These surges typically occur within 60 seconds after throttle advance to T/O power, a critical phase of flight. These events have resulted in numerous aborted T/O's, in-flight engine shutdowns, and diverted flights. A surge of this kind on a single engine of a multi-engine airplane would not normally result in an unsafe condition. To date, two dual-engine surge events have occurred, the latest in March 2001 involving a twin-engine aircraft.

The investigation into these events has revealed no special causes for these surges. The FAA believes that a low-stall margin results from open clearances in the aft stages of the HPC. The worst-case open clearance

condition in the aft stage compressor of the HPC occurs about 60 seconds after the throttle is advanced for T/O. A binding of the compressor flowpath and stator segments within the outer case (causing out-of-round flowpath or local open clearances) adds to this normally worst-case condition. Pratt and Whitney has initiated a root-cause analysis program to verify this belief, and to identify other contributing factors that may contribute to the high rate of takeoff surges in the PW4000 fleet.

On October 25, 2000, the FAA issued AD 2000–22–01 (65 FR 63793, dated October 25, 2000), applicable to PW4000 series engines, to require limiting the number of engines with the HPC CBS configuration, which are used on Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes, to one on each airplane according to the cyclic limits specified in that AD. AD 2000–22–01 also prohibits using engines with HPC modules that incorporated the HPC CBS configuration, after the effective date of that AD.

On April 20, 2001, the FAA issued AD 2001–09–07 (66 FR 21083, dated April 27, 2001), applicable to PW4000 series turbofan engines, to require limiting the number of PW4000 engines to no more than one engine with potentially reduced stability on each airplane and removal of certain PW4000 engines before exceeding cyclic limits that are determined by airplane model. Those engines with potentially reduced stability are listed by serial number in the AD. AD 2001–09–07 superseded emergency AD 2001–08–52. AD 2001–09–07 also requires the removal of certain PW4000 engines that have an HPC with 1,500 or more CSO greater than the high pressure turbine (HPT) CSO, and establishes a minimum rebuild standard for engines that are returned to service.

Since AD 2000–22–01 and AD 2001–09–07 were issued, the FAA has reevaluated those requirements and found that the requirements of those AD's were not sufficient to meet the original safety intent of those AD's. The PW4000 fleet was evaluated by configuration, installation, thrust rating and other variables to determine which subpopulations are most prone to high power takeoff surges. This information was then evaluated to create cyclic limits for each airplane and engine combination to maintain the risk of a multiple-engine dual surge risk at an acceptable level. Cyclic limits were then developed for the HPC to reduce the single engine surge rate.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since the unsafe condition described is likely to exist or develop on other PW4000 series turbofan engines of the same type design, this AD is being issued to prevent multiple-engine power losses due to HPC surge and to reduce the rate of single-engine surge events. This AD requires:

- Limiting the number of engines with the HPC CBS configuration to one on each airplane within 100 cycles-in-service (CIS) after the effective date of this AD, AND
- Limiting the number of PW4000 engines with potentially reduced stability on each airplane, based upon airplane and engine configuration, within 50 CIS after the effective date of this AD, AND
- Removing certain PW4000 engines from service, before exceeding cyclic limits on the HPC based on CSO, within 50 CIS after the effective date of this AD, AND
- Preventing the build-up of PW4000 engines that have an HPC with 1,500 or more CSO greater than the HPT CSO, AND
- A minimum rebuild standard for engines that are returned to service.

Interim Action

The actions specified in this AD are considered interim action and further action is anticipated based on the continuing investigation of the HPC surges. This AD has been coordinated with the FAA Transport Aircraft Directorate.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–47–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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, 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 removing Amendment 39–11947 (65 FR 63793, dated October 25, 2000) and Amendment 39–12212 (66 FR 21083, dated April 27, 2001), and by adding a new airworthiness directive (AD), Amendment 39–12346, to read as follows:

2001–15–12 Pratt and Whitney: Amendment 39–12346. Docket No. 2000–NE–47–AD. Supersedes Amendment 39–11947, and Amendment 39–12212.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine 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 engines 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 (l) 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: Compliance with this AD is required as indicated, unless already done.

To prevent multiple-engine power losses due to high pressure compressor (HPC) surge and to reduce the rate of single-engine surge events, do the following:

(a) When complying with this AD, use the following Table 1 of this AD to determine the configuration of each engine on each airplane:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of SB PW4ENG 72–514.
(2) Phase 1 with 1TVCB.	B	Same as configuration (1) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run.	B	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(4) Phase 3, 1st Run.	C	Same as configuration (3) except that that the engine has not had an HPC overhaul since new.
(5) HPC Cutback Stator Configuration Engines.	D	Engines that incorporated any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711.

(b) Within 50 cycles-in-service (CIS) after the effective date of this AD, and thereafter, remove engines from service that exceed the HPC cycles-since-new (CSN) or cycles-since-overhaul (CSO) limits in the following Table 2 of this AD:

TABLE 2.—HPC CYCLIC LIMITS BY ENGINE CONFIGURATION

Engine model	Engine serial number (SN)	Engine configuration (CSO or CSN)			
		A	B	C	D
(1) PW4152	All	3,600	5,600	8,000	1,300

TABLE 2.—HPC CYCLIC LIMITS BY ENGINE CONFIGURATION—Continued

Engine model	Engine serial number (SN)	Engine configuration (CSO or CSN)			
		A	B	C	D
(2) PW4156, PW4156A, and PW4158.	717205, 717702, 717703, 717710, 717752, 717788, 717798, 717799, 724023, 724026, 724027, 724033, 724034, 724036, 724037, 724040, 724041, 724044, 724045, 724048, 724049, 724050, 724052, 724055, 724056, 724059, 724061, 724062, 724063, 724065, 724067, 724073, 724074, 724075, 724079, 724094, 724095, 724551, 724552, 724555, 724556, 724557, 724558, 724561, 724562, 724563, 724564, 724567, 724568, 724569, 724570, 724571, 724572, 724573, 724574, 724575, 724576, 724578, 724640, 724806, 724807, 724808, 724809, 724811, 724820, 724821, 724827, 724833, 724835, 724836, 724840, 724841, 724848, 724849, 724855, 724857, 724858, 724861, 724862, 724865, 724866, 724868, 724909, 724910, 724913, 724914, 724924, 724925, 724926, 724927, 727912, 728519, 728520, 728521, 728522, 728523, 728524, 728525, 728526, 728527, 728528, 728534, 728535, 728536, 728537, 728538, 728539, 728540, 728541, 728542, 728543, 728544, 728545, 728546, 728547, 728548, 728549, 728550, 728551, 728552, 728553, 728554, 728557, 728558, 728559, 728560, 728561, 728562, 728563, 728564	3,200	4,400	8,000	1,300
(3) PW4158.	717704, 724001, 724002, 724004, 724005, 724006, 724007, 724008, 724009, 724010, 724011, 724019, 724020, 724031, 724035, 724038, 724039, 724042, 724043, 724047, 724068, 724069, 724071, 724076, 724077, 724080, 724085, 724086, 724087, 724092, 724093, 724096, 724097, 724801, 724802, 724803, 724804, 724805, 724813, 724814, 724819, 724823, 724824, 724825, 724826, 724828, 724831, 724832, 724843, 724846, 724847, 724851, 724852, 724853, 724854, 724859, 724860, 724863, 724864, 724867, 724869, 724870, 724871, 724872, 724873, 724874, 724875, 724876, 724880, 724881, 724882, 724883, 724884, 724885, 724886, 724887, 724888, 724889, 724890, 724892, 724893, 724894, 724895, 724896, 724897, 724898, 724899, 724900, 724932, 727315, 727436, 728501, 728502, 728503, 728504, 728505, 728506, 728507, 728508, 728509, 728510, 728511, 728515, 728518, 728531, 728532, 728533	6,500	7,500	8,000	1,300
(4) PW4156, PW4156A, and PW4158.	All others not listed by SN in this Table.	2,150	2,800	8,000	1,300
(5) PW4052 and 4056.	All engines.	3,000	4,400	4,400	1,300
(6) PW4060, PW4060C, PW4062, PW4460, and PW4462.	All engines.	2,150	3,600	4,400	1,300

Engines Installed on Boeing 747 Airplanes

(c) Within 50 CIS after the effective date of this AD, and thereafter, for engines installed on Boeing 747 series aircraft, configure the airplane so that all of the following rules are met:

(1) At least one engine must be below the cyclic limits listed under Rule 1a in the following Table 3 of this AD:

TABLE 3.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR BOEING 747 AIRPLANES

Number of engines in each Configuration on the Airplane			Rule 1a			Rule 1b			Rule 1c			Rule 1d (Quantity of engines in each configuration)		
A	B or C	D	A	B or C	D	A	B or C	D	A	B or C	D	A	B or C	D
(i) 4	0	0	700	.....	.....	1300	.....	.....	1800	.....	.....	(1)—2400 (3)—400	.....	.....
(ii) 3	1	0	700	2300	.....	1300	2600	.....	1800	3000	.....	(1)—2400 (2)—400	(1)—1800	.....

TABLE 3.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR BOEING 747 AIRPLANES—Continued

Number of engines in each Configuration on the Airplane			Rule 1a			Rule 1b			Rule 1c			Rule 1d (Quantity of engines in each configuration)		
A	B or C	D	A	B or C	D	A	B or C	D	A	B or C	D	A	B or C	D
(iii) 2	2	0	700	2300	.....	1300	2600	.....	1800	3000	.....	(1)—2400 (1)—400	(2)—1800	.....
(iv) 1	3	0	700	2300	.....	1300	2600	.....	1800	3000	.....	(1)—2400	(3)—1800	.....
(v) 0	4	0	.....	2300	.....	.....	2600	.....	.....	3000	.....	.....	(1)—3300 (3)—1800	.....
(vi) 3	0	1	700	.....	750	1300	.....	750	1800	.....	750	(1)—2400 (2)—400	.....	(1)—750.
(vii) 2	1	1	700	2300	750	1300	2600	750	1800	3000	750	(1)—2400 (1)—400	(1)—1800	(1)—750.
(viii) 1	2	1	700	2300	750	1300	2600	750	1800	3000	750	(1)—2400	(2)—1800	(1)—750.
(ix) 0	3	1	.....	2300	750	.....	2600	750	.....	3000	750	.....	(1)—3300 (2)—1800	(1)—750.

(2) At least two engines must be below the cyclic limits listed under Rule 1b in Table 3 of this AD.

(3) At least three engines must be below the cyclic limits listed under Rule 1c in Table 3 of this AD.

(4) At least one engine must be below the cyclic limits listed under Rule 1d in Table 3 of this AD. When applying Rule 1d of this AD, and two limits are shown for an engine configuration, the higher cyclic limit for that configuration must be applied only to the engine with the highest CSO or CSN of that configuration. The lower limit is then applied to the remaining engines of that configuration.

Engines Installed on McDonnell Douglas MD–11 Airplanes

(d) Within 50 CIS after the effective date of this AD, and thereafter, for engines installed on McDonnell Douglas MD–11 airplanes, configure the airplane so that all of the following rules are met:

(1) At least one engine must be below the cyclic limits listed under Rule 2a in the following Table 4 of this AD:

TABLE 4.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR MCDONNELL DOUGLAS MD–11

Number of engines in each Configuration the Airplane				Rule 2a				Rule 2b				Rule 2c (Quantity of Engines in each Configuration)			
A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
(i) 3	0	0	0	850	.....	.....	.....	1000	.....	.....	.....	(1)—1600 (2)—600	.....	.....	.....
(ii) 2	1	0	0	850	1700	.....	.....	1000	2300	.....	.....	(1)—1600 (1)—600	(1)—1400	.....	.....
(iii) 1	2	0	0	850	1700	.....	.....	1000	2300	.....	.....	(1)—1600	(2)—1400	.....	.....
(iv) 0	3	0	0	.....	1700	.....	.....	.....	2300	.....	.....	.....	(1)—3000 (2)—1400	.....	.....
(v) 2	0	1	0	850	.....	2650	.....	1000	.....	2900	.....	(1)—1600 (1)—600	.....	(1)—2800	.....
(vi) 1	0	2	0	850	.....	2650	.....	1000	.....	2900	.....	(1)—1600	.....	(2)—2800	.....
(vii) 0	0	3	0	.....	.....	2650	.....	.....	.....	2900	.....	.....	.....	(1)—3200 (2)—2800	.....
(viii) 2	0	0	1	850	.....	.....	750	1000	.....	.....	750	(1)—1600 (1)—600	.....	.....	(1)—750.
(ix) 0	2	1	0	.....	1700	2650	.....	.....	2300	2900	.....	.....	(1)—3000 (1)—1400	(1)—2800	.....
(x) 0	1	2	0	.....	1700	2650	.....	.....	2300	2900	.....	.....	(1)—3000	(2)—2800	.....
(xi) 0	2	0	1	.....	1700	.....	750	.....	2300	.....	750	.....	(1)—3000 (1)—1400	.....	(1)—750.
(xii) 0	0	2	1	.....	.....	2650	750	.....	.....	2900	750	.....	.....	(1)—3200 (1)—2800	(1)—750.
(xiii) 1	1	1	0	850	1700	2650	.....	1000	2300	2900	.....	(1)—1600	(1)—1400	(1)—2800	.....
(xiv) 1	1	0	1	850	1700	.....	750	1000	2300	.....	750	(1)—1600	(1)—1400	.....	(1)—750.

TABLE 4.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR MCDONNELL DOUGLAS MD–11—Continued

Number of engines in each Configuration the Airplane				Rule 2a				Rule 2b				Rule 2c (Quantity of Engines in each Configuration)			
A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
(xv) 1	0	1	1	850	.....	2650	750	1000	.....	2900	750	(1)—1600	.....	(1)—2800	(1)—750.
(xvi) 0	1	1	1	.....	1700	2650	750	.....	2300	2900	750	.....	(1)—3000	(1)—2800	(1)—750.

(2) At least two engines must be below the cyclic limits listed under Rule 2b in Table 4 of this AD.

(3) At least one engine must be below the cyclic limits listed under Rule 2c in Table 4 of this AD. When applying Rule 2c of this AD, and two limits are shown for an engine configuration, the higher cyclic limit for that configuration must be applied only to the engine with the highest CSO or CSN of that configuration. The lower limit is then applied to the remaining engines of that configuration.

Engines Installed on Boeing 767, Airbus A300, or Airbus A310 Airplanes

(e) Within 50 CIS after the effective date of this AD, and thereafter, for engines installed on Boeing 767 Series, Airbus A300 series or Airbus A310 series airplanes, configure the airplane so that no more than one engine may exceed the cyclic limits listed in the following Table 5 of this AD:

TABLE 5.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR TWIN-ENGINE AIRPLANE

Engine model	Engine serial number (SN)	Engine configuration (CSO or CSN)			
		A	B	C	D
(1) PW4152.	All	2,500	4,000	6,600	750
(2) PW4156, PW4156A, and PW4158.	717205, 717702, 717703, 717710, 717752, 717788, 717798, 717799, 724023, 724026, 724027, 724033, 724034, 724036, 724037, 724040, 724041, 724044, 724045, 724048, 724049, 724050, 724052, 724055, 724056, 724059, 724061, 724062, 724063, 724065, 724067, 724073, 724074, 724075, 724079, 724094, 724095, 724551, 724552, 724555, 724556, 724557, 724558, 724561, 724562, 724563, 724564, 724567, 724568, 724569, 724570, 724571, 724572, 724573, 724574, 724575, 724576, 724578, 724640, 724806, 724807, 724808, 724809, 724811, 724820, 724821, 724827, 724833, 724835, 724836, 724840, 724841, 724848, 724849, 724855, 724857, 724858, 724861, 724862, 724865, 724866, 724868, 724909, 724910, 724913, 724914, 724924, 724925, 724926, 724927, 727912, 728519, 728520, 728521, 728522, 728523, 728524, 728525, 728526, 728527, 728528, 728534, 728535, 728536, 728537, 728538, 728539, 728540, 728541, 728542, 728543, 728544, 728545, 728546, 728547, 728548, 728549, 728550, 728551, 728552, 728553, 728554, 728557, 728558, 728559, 728560, 728561, 728562, 728563, 728564	2,000	3,200	6,600	750
(3) PW4158.	717704, 724001, 724002, 724004, 724005, 724006, 724007, 724008, 724009, 724010, 724011, 724019, 724020, 724031, 724035, 724038, 724039, 724042, 724043, 724047, 724068, 724069, 724071, 724076, 724077, 724080, 724085, 724086, 724087, 724092, 724093, 724096, 724097, 724801, 724802, 724803, 724804, 724805, 724813, 724814, 724819, 724823, 724824, 724825, 724826, 724828, 724831, 724832, 724843, 724846, 724847, 724851, 724852, 724853, 724854, 724859, 724860, 724863, 724864, 724867, 724869, 724870, 724871, 724872, 724873, 724874, 724875, 724876, 724880, 724881, 724882, 724883, 724884, 724885, 724886, 724887, 724888, 724889, 724890, 724892, 724893, 724894, 724895, 724896, 724897, 724898, 724899, 724900, 724932, 727315, 727436, 728501, 728502, 728503, 728504, 728505, 728506, 728507, 728508, 728509, 728510, 728511, 728515, 728518, 728531, 728532, 728533	4,300	5,600	6,600	750

TABLE 5.—HPC CSO OR CSN CYCLIC LIMITS BY ENGINE CONFIGURATION FOR TWIN-ENGINE AIRPLANE—Continued

Engine model	Engine serial number (SN)	Engine configuration (CSO or CSN)			
		A	B	C	D
(4) PW4156, PW4156A, and PW4158.	All others not listed by SN in this Table.	1,050	1,600	6,600	750
(5) PW4052.	All engines.	3,000	4,400	4,400	750
(6) PW4056.	All engines.	1,800	3,000	3,000	750
(7) PW4060, PW4060A, PW4060C, and PW4062.	All engines.	1,100	2,300	3,000	750

Minimum Build Standard

(f) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or more greater than the CSO of the HPT.

(g) After the effective date of this AD, any engine that undergoes an HPC overhaul must meet the build standard of the following PW SB's: PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72–514.

(h) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules after the effective date of this AD, must meet the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72–514.

(i) Within 100 CIS after the effective date of this AD, and thereafter, limit the number of engines with configuration D from Table 1 of this AD to one on each airplane.

(j) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug in the affected HPC overhaul period, the cyclic limits associated with the highest thrust rating must be utilized.

Definitions

(k) For the purposes of this AD, the following definitions apply:

(1) *HPC Overhaul*—an HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) *HPT Overhaul*—an HPT overhaul is defined as restoration of the HPT module stage 1 and 2 HPT blade tip clearances to the applicable fits and clearances section of the engine manual.

(3) A *Phase 3 engine* is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a (-3C) suffix after the engine model number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

Alternative Methods of Compliance

(l) 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, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(m) 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.

Effective Date

(n) This amendment becomes effective August 10, 2001.

Issued in Burlington, Massachusetts on July 17, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–18432 Filed 7–25–01; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AF13

Collection of Supplemental Security Income (SSI) Overpayments From Social Security Benefits

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our regulations dealing with the recovery of overpayments under the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). Under the revisions, we are modifying our regulations to permit SSA to recover SSI overpayments by adjusting the amount of social security benefits payable to the individual under title II of the Act. This collection practice is limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or State supplementary cash payments that we administer. Also, the amount of the title II benefits withheld in a month to recover the title XVI overpayment may not exceed 10 percent of the amount payable under title II unless the overpaid person requests us to withhold a different amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. In a case involving willful misrepresentation or concealment, the entire title II benefit amount will be withheld to recover the overpayment. These revisions would permit SSA to recover SSI overpayments from title II benefits payable to the overpaid individual when SSI cash benefits are not payable. These revisions are necessary to implement section 1147 of the Act.

EFFECTIVE DATE: These regulations are effective August 27, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–7183 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: Under the law in effect prior to the enactment of Pub. L. 105–306 on October 28, 1998, if an individual received an SSI overpayment and failed to refund the full overpayment amount, SSA was authorized to recover the overpayment by adjusting future SSI payments due the recipient or his or her eligible spouse. If the overpaid person was not receiving SSI payments but was entitled

to benefits under title II of the Act, he or she generally could elect voluntarily to have the overpayment recovered by adjusting the title II benefits. If an overpaid individual was no longer entitled to SSI payments, we could refer the overpayment to the Department of the Treasury for offset against any Federal tax refund due that individual.

Section 8 of Pub. L. 105–306 added new section 1147 to the Act, permitting SSA to use an additional collection tool to recover SSI overpayments. Under section 1147, SSA may recover SSI overpayments by adjusting the amount of any benefits payable to the overpaid individual under title II of the Act, without the consent of the individual. Throughout the remainder of this preamble, this type of overpayment recovery is referred to as ''cross-program recovery.''

Section 1147 limits the use of cross-program recovery to SSI overpayments made to individuals who are not currently eligible to receive cash payments, including State supplementary payments, under title XVI or under section 212(b) of Pub. L. 93–66. Also, section 1147 limits the amount of the SSI overpayment that may be recovered in any month through cross-program recovery to 10 percent of the benefit amount payable under title II in any month, unless the overpaid person requests that SSA withhold a higher amount or unless the overpaid person or his or her spouse willfully misrepresented or concealed material information in connection with the overpayment. If there is willful misrepresentation or concealment, section 1147 permits SSA to recover the overpayment by withholding 100 percent of the title II benefit payable.

Explanation of Changes

We are adding to our regulations new § 416.572 setting forth our rules on cross-program recovery. This new section:

- Defines certain terms;
- Explains the conditions for imposing cross-program recovery;
- Explains the rights of the overpaid individual to request waiver of the overpayment and review of our determination that he or she still owes us the overpayment balance; and
- Explains the rules for determining the amount to be withheld from the individual's title II benefits.

Specifically, in paragraph (a) of § 416.572, we define the following terms:

- ''Cross-program recovery'' is defined as the process we will use to collect SSI overpayments by adjusting title II benefits payable in a month.
- ''Benefits payable in a month'' is defined as the amount of title II benefits a person actually receives in a given month. Under our definition, ''benefits payable in a month'' includes any past due benefits a person receives, but does not include any amounts withheld from the person's benefits under the deductions or reductions listed in § 404.401(a) or (b) of our regulations. The definition also includes an example of how we determine the ''benefits payable in a month.''
- ''Not currently eligible for SSI cash benefits'' means that a person is receiving no cash payments, including State supplementary payments, under title XVI of the Act or under section 212(b) of Pub. L. 93–66.

In paragraph (b) of § 416.572, we explain that we may use cross-program recovery to collect SSI overpayments if the overpaid person is not currently receiving SSI cash benefits and is receiving benefits under title II of the Act. Thus, if a person whose title II benefits are being adjusted to recover an SSI overpayment again becomes eligible for SSI benefits, cross-program recovery will end with the month in which SSI cash benefits resume. When SSI benefits become payable to the overpaid person, we will resume the monthly adjustment of SSI payments to collect the overpayment. We will not start cross-program recovery if the overpaid person is refunding the title XVI overpayment by regular monthly installments or we are recovering a title II overpayment by withholding that person's title II benefits.

Paragraph (c) of § 416.572 lists the information that we will include in the notice we send to a person whose title II benefits are subject to cross-program recovery. The notice informs the person that he or she owes a specific SSI overpayment balance, that we will be using cross-program recovery to collect that balance and that we will withhold a specific amount from the title II benefits. The notice will state that the person may ask us to review our determination that he or she still owes the overpayment balance. The notice will also advise the person he or she may request a waiver of the overpayment under section 1631(b)(1)(B) of the Act and explain the circumstances under which we will waive the overpayment. The notice will inform the individual how to request a waiver. Unless the overpaid person or that person's spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice will also state that the person may request that we withhold from the title II benefits a different amount than the amount stated in the notice.

Paragraph (d) of § 416.572 explains that we will begin to withhold no sooner than 30 days after the date of the notice. If the individual pays the entire overpayment balance within that 30-day period, we will not impose cross-program recovery. If within the 30-day period the person asks us to waive the overpayment or asks us to review the determination that he or she still owes us the overpayment balance, we will not begin cross-program recovery until we review the matter and notify the person of our decision. If within the 30-day period, the person requests that we withhold a different amount, we will not begin cross-program recovery until we determine the amount we will withhold.

Paragraph (e) of § 416.572 explains that we will generally collect the overpayment at the rate of 10 percent of the title II benefits payable in any month. However, we will collect at a different rate if the person requests, and we approve, a different rate of withholding or if the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. If an overpaid person requests withholding at a lesser rate than 10 percent, we will set a rate that will not deprive the individual of income required for ordinary and necessary living expenses as prescribed in § 416.571 of our regulations. If there has been willful misrepresentation or concealment of material information in connection with the overpayment, we will recover the overpayment by withholding at the rate of 100 percent of the title II benefits payable. We will not collect at a lesser rate.

Other Revisions

We are revising § 404.401(c) to explain that we may adjust a person's title II benefits to recover an SSI overpayment using cross-program recovery.

We are revising § 416.570 to eliminate the reference to voluntary withholding of an SSI overpayment from title II benefits. Under section 1147 of the Act, we now have authority to use cross-program recovery to recover title XVI overpayments without the consent of the overpaid person.

Public Comments

On October 3, 2000, we published proposed rules in the **Federal Register** at 65 FR 58970 and provided a 60-day period for interested parties to comment. We received comments from 6 organizations. Because some of the

comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the significant issues raised by the commenters that are within the scope of the proposed rules. We have made revisions to the proposed rules to address some of the concerns of the commenters.

Comment: Letters from three organizations recommended that we include language in the cross-program recovery notice advising individuals of their rights to request that we waive collection of the overpayment. One of these organizations expressed concern that SSA adopt procedural protections that meet the needs of these individuals (title II beneficiaries who previously received SSI and are disabled and/or elderly) and recommended that the final version of new § 416.572(c) require inclusion of information about the availability of waiver under the procedures of 20 CFR § 416.550 in the notice. Similarly, another organization recommended that SSA change new § 416.572(c) to state that the written notice to individuals subject to cross-program recovery should include information about the availability of waiver. The third organization expressed concern that individuals likely to be affected by our new statutory authority to apply cross-program recovery may not realize that they may request waiver at any time.

Response: After careful consideration, we have decided to include language about the availability of waiver in the written notice to individuals subject to cross-program recovery. We have changed new § 416.572(c) and (d) to provide that (1) our written notice to an individual subject to cross-program recovery will explain that the individual may request waiver, and (2) if an individual requests waiver within 30 days from the date of the notice, we will not start withholding title II benefits before we review the matter and notify the individual of our decision.

Comment: Two organizations sent comments relating to the overpaid individual's right to request that we collect the SSI overpayment from title II benefits at a rate that is lower than 10 percent of the title II benefits payable in a month. One organization recommended that the final regulation state that the individual may request a withholding rate of less than 10 percent under the same criteria applicable under 20 CFR 416.571 when we adjust SSI benefits. The other organization recommended that the notice portion of the final regulation state that an individual may request a rate that is higher or lower than the 10 percent figure and state the criteria that SSA would use to determine the rate.

Response: With regard to the first recommendation, pertinent language of paragraph (e)(1)(i) of § 416.572 states that we will collect the overpayment by withholding 10 percent of title II benefits unless the overpaid person ''request[s] and we approve a *different rate of withholding*.'' Paragraph (c)(4) of § 416.572 provides that, in most cases, the notice on proposed cross-program recovery will state that the individual ''may request that we withhold a *different amount* * * *'' Paragraph (d)(3) provides that if within 30 days from the date of the notice the individual asks us to ''withhold a *different amount* than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold.'' The plain meaning of the terms ''different rate of withholding'' and ''different amount'' in these paragraphs encompasses an amount that is lower than 10 percent of the benefit payable in a month and an amount that is higher than the 10 percent figure. Therefore, we saw no need to revise the language in these paragraphs. However, we have revised the language in paragraph (e)(2) in § 416.572 to state that we will use the criteria in § 416.571 to determine whether we will grant an individual's request that we withhold less than the 10 percent figure mentioned in the cross-program recovery notice. Under these criteria, we would consider the individual's income, resources and financial obligations. We would attempt to establish a rate of withholding that would not deprive the individual of income needed to meet ordinary and necessary living expenses.

Comment: Two organizations asserted that there are problems in the administration of our programs that cause overpayments. Among the concerns are staffing in local offices, training for our employees, and documenting and acting on reports of changes potentially affecting eligibility or benefit amounts. One organization said we should correct the problems before developing new rules for and methods of collecting the overpayments.

Response: We are not adopting the suggestion that we delay implementation of cross-program recovery. Overpayments of benefits occur for many reasons. We take our responsibility for stewardship of the programs that we administer very seriously. That is why we constantly track our payment accuracy and strive to minimize overpayments. In addition, we are pursuing several initiatives that address the causes of overpayments and other matters described by the organizations. Regardless of the reasons for overpayments, we are responsible for recovering as much of the overpaid money as possible consistent with the law.

Comment: One organization stated that SSA should delay the start of cross-program recovery until 60 days after the written notice to the individual concerning the planned benefit reduction. The organization felt that the 30-day period which SSA plans to use is not enough time for the individual to contact SSA in order to repay the debt, ask for a review, ask for a different rate of withholding or request waiver.

Response: We are not adopting the suggestion that we delay the reduction until 60 days after the written notice to the individual. We believe the 30-day period is adequate time for an individual to request review or ask for waiver or a different rate of withholding. Overpaid individuals do not have to submit all of the evidence within that 30-day period. They need only make their requests during the 30 days. After the request, they can review our records and gather and submit evidence.

SSA has been using this process for years in its efforts to collect overpayments. We believe that the process allows individuals adequate time to request review or waiver or lower withholding rates and to submit essential evidence.

Comment: One organization stated that we should include in the notice described in § 416.572(c) the same information about the overpaid amount that we include in the initial notice of overpayment. The organization states that the information should be included because it believes a person cannot adequately identify or question an overpayment without more information.

Response: After considering the organization's comment, we decided not to adopt the suggestion. The new notice described in § 416.572(c) will show the balance of the overpayment at the time we send the notice. The initial notice of overpayment previously sent to the overpaid person includes information such as the beginning balance of the overpayment, the general cause of the overpayment, and the monthly amounts received compared to the amounts that the person should have received during each month of the overpayment. We include the more detailed information in initial notices of overpayment because those notices give overpaid people the right to request appeal of the fact or amount of the overpayment. To exercise that right, overpaid people need to know specifically the

overpayment amount, when they incurred the overpayment, how the overpayment was calculated, and why the overpayment occurred.

The notice described in § 416.572(c) is sent to the overpaid person after the right to appeal the fact or the original amount of the overpayment has expired. Since the person's appeal rights on these matters have expired, the detailed information about the overpayment is not required in the new notice regarding cross-program recovery. Under the new regulation, the overpaid individual would have the right to have us review whether he or she still owes all or part of the overpayment balance. For example, the individual may have evidence that he or she refunded all or part of the balance or that we previously waived collection. We believe that the new notice of cross-program recovery gives sufficient information about the overpayment for the individual to determine whether to ask for such review.

In addition, it is our long-held policy to provide the detailed information on the amount of the initial overpayment balance and the cause of the overpayment in the initial notice of overpayment. We do not repeat that information with each subsequent overpayment-related notice we send. In subsequent notices to overpaid persons, we invite them to ask for more information about the overpayment if they want to know more detail. To facilitate the process of providing more information to overpaid persons, we provide them in our subsequent notices (including the new notice described in § 416.572(c)) with a variety of contact information, such as the Agency's national toll-free telephone number and the address and telephone number of the local office that is closest to them. When overpaid persons ask for more information, we provide them with the details contained in our records, including why the overpayment occurred, when it occurred, and how we calculate the overpayment.

Comment: One organization commented that the 100 percent withholding rate should not be imposed without SSA's final determination that the debt was the result of fraud or willful misrepresentation. The organization stated that this is necessary to protect vulnerable people from unjustified penalties.

Response: In determining to collect the SSI overpayment from title II benefits without regard to the 10 percent limitation under section 1147(a)(2) of the Act, we will apply the same procedures that we apply when we collect SSI overpayments from SSI benefits under section 1631(b) of the Act. We will make an initial finding on willful concealment or misrepresentation. Then, we will send to the individual thought to be guilty of those acts written notification of our finding and our intention to withhold all of the individual's title II benefits until we collect the SSI overpayment balance. The notice will explain that the person may request a reconsideration of the initial determination. If the individual does not request reconsideration of our finding in a timely manner, the initial determination becomes our final determination and we will begin to impose the 100 percent withholding rate. If the individual requests reconsideration in a timely manner, we will not begin 100 percent withholding while we review the matter. If the individual requests reconsideration in a timely manner and we decide that our initial finding was correct, we will begin withholding at the 100 percent rate after we send the individual written notice of our reconsideration determination.

Comment: An organization urged us to include in the notice provisions of § 416.572(c) the elements required by the order issued by the Federal District Court for the Southern District of New York in the case of *Ellender* v. *Schweiker,* 575 F. Supp. 590 (1983), as modified November 21, 2000. The organization stated its view that this action was necessary to comply with the modified court order.

Response: For the reasons that follow, we are not adopting this recommendation. The court order in the *Ellender* case does not apply nationwide. It applies only to a narrow class comprised of individuals who meet all of the following criteria: they resided in New York State on October 26, 1982; they were entitled to title II benefits on that date; they were former SSI recipients, but not current SSI recipients, on that date. Moreover, we do not agree that the court order, as modified November 21, 2000, requires that we include in the regulation the notice elements listed in the order. The order requires that we include a statement in ''instructions and directives issued by the Social Security Administration to its staff, including the Office of Hearings and Appeals'', that these elements be included in notices sent to *Ellender* class members regarding recovery of SSI overpayments from title II benefits. We are preparing such a statement for our instructions in the Program Operations Manual System and the Hearings, Appeals and Litigation Law Manual (HALLEX), and we believe that inclusion of the statement in those instructions is enough to satisfy the court order. We are also taking steps to ensure that cross-program recovery notices that do not contain the elements listed in the *Ellender* court order are not sent to *Ellender* class members.

Comment: One organization suggested that SSA use focus groups to ensure that the new written notice it proposes to use for cross-program recovery is understandable to individuals who receive it. The organization is concerned that the individuals will not understand the effect of the notices or their appeal rights.

Response: In developing the cross-program recovery notice, we have attempted to use, wherever possible, language that had previously been cleared within SSA and, in many cases, had already been tested using focus groups. In addition, any new language developed specifically for this notice was developed using the same notice standards (including plain-language) we use in developing all our notices. Therefore, we are not delaying implementation of cross-program recovery in order to further focus-test the language in the cross-program recovery notice.

Comment: One organization commented that SSA should include in its regulation a new section to provide notice of the right to request waiver and review (with an explanation of the difference between waiver and review) to individuals who were overpaid SSI, were subject to cross-program recovery, and who subsequently become eligible again for SSI payments.

Response: We are not adopting this recommendation. Under our current policies, we notify an individual that he or she is entitled to SSI benefits. That notice would state the amount of the benefits and explain any adjustment to the benefit amount, including adjustment to collect any outstanding overpayment balance. The notice informs the individual that he or she may appeal the determination but does not discuss waiver of collection of the overpayment.

We do not intend to add information on waiver to this type of notice. The individual would already have been notified several times about the right to request waiver. The initial notice of overpayment discusses waiver. If we select the debt for the Treasury Offset Program, we would send a pre-offset notice which explains waiver, as required by 31 U.S.C. 3720A. Under the provisions of new § 416.572(c) of the regulations, an individual who was subject to cross-program recovery would also have been given information about

waiver in the new written notice about our intent to collect the SSI debt from title II benefits. We believe these multiple notifications of the right to request waiver are sufficient. If an individual does request waiver when he or she becomes eligible for SSI, we would make our determination under section 1631(b)(1) of the Social Security Act, the regulations set out in 20 CFR §§ 416.550–416.556 and the procedures adopted to implement them.

Comment: One organization asserted that SSA should revise § 416.572(e) to allow individuals found guilty of willful misrepresentation or concealment of material information in connection with the overpayment to request a rate of withholding of less than 100 percent. The organization felt the person should be afforded the opportunity to prove that a 100 percent withholding would be a hardship because it would deprive him or her of ordinary and necessary living expenses.

Response: We are not adopting this suggestion. When an individual is found guilty of willful misrepresentation or concealment of material information in connection with the overpayment, section 1147(a)(2)(A) of the Social Security Act permits us to collect by withholding up to 100 percent of the benefits payable in a month until we collect the entire overpayment. We have a stewardship responsibility to ensure that the programs we administer are run efficiently and effectively, to recover overpayments and to prevent and deter fraud. Our longstanding policy is to collect debts arising from willful misrepresentation or concealment at the rate of 100 percent withholding. We believe that the 100 percent withholding is an appropriate penalty for such conduct and demonstrates to anyone who is contemplating such conduct that the consequences will be significant. In addition, we believe that allowing someone who obtains benefits through fraudulent acts to repay the debt over an extended period is not appropriate public policy.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, the regulations were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The estimated program savings from increased collections as a result of implementation of section 8 of Pub. L. 105–306 are $15 million in each of fiscal years (FY) 2001 through 2003; $40 million in FY 2004; and $30 million in FY 2005 for a total increase of $115 million over 5 years. The administrative savings estimate for FYs 2001 through 2005 is less than $5 million.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance. In fact, these final rules would decrease the paperwork burden on the public by 833 burden hours per year. This is because, under the final rules, overpaid persons will no longer complete Form SSA–730–U2 (Request To Have Supplemental Security Income Overpayment Withheld From My Social Security Benefits), OMB Control Number 0960–0549, which provides SSA with the overpaid person's request that SSA collect a title XVI overpayment from the person's title II benefits.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 7, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, we are amending Chapter III of Title 20, Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1147 of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320b–17).

2. Section 404.401 is amended by revising paragraph (c) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(c) *Adjustments.* We may adjust your benefits to correct errors in payments under title II of the Act. We may also adjust your benefits if you received more than the correct amount due under title XVI of the Act. For the title II rules on adjustments to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED (PRIVATE)

3. The authority citation for subpart E of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

4. Section 416.570 is amended by revising the third sentence to read as follows:

§ 416.570 Adjustment-general rule.

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XVIII of the Act will be recovered by adjusting SSI benefits.

* * * * *

5. Section 416.572 is added to read as follows:

§ 416.572 Are title II benefits subject to adjustment to recover title XVI overpayments?

(a) *Definitions*—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you in a month under title II of the Social Security Act.

(2) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the amount

of title II benefits you would actually receive in that month. It includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter.

Example: A person is entitled to monthly title II benefits of $1000. The first benefit payment the person would receive includes past-due benefits of $1000. The amount of benefits payable in that month for purposes of cross-program recovery is $2000. So, if we were recovering 10 percent of that month's benefit, we would be recovering $200. The monthly benefit payable for subsequent months is $1000. So, if we were recovering 10 percent of that month's benefit, we would be recovering $100. If $200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in § § 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be $800. So, if we were recovering 10 percent of that month's benefit, we would be recovering $80.

(3) *Not currently eligible for SSI cash benefits.* This means that a person is not receiving any cash payment, including State supplementary payments that we administer, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93–66 (42 U.S.C. 1382 note).

(b) *When we may collect title XVI overpayments using cross-program recovery.* (1) We may use cross-program recovery to collect a title XVI overpayment you owe if:

(i) You are not currently eligible for SSI cash benefits, and

(ii) You are receiving title II benefits.

(2) We will not start cross-program recovery if:

(i) You are refunding your title XVI overpayment by regular monthly installments, or

(ii) We are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(c) *Notice you will receive.* Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(1) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(2) We will withhold a specific amount from the title II benefits payable to you in a month (see paragraph (e) of this section);

(3) You may ask us to review this determination that you still owe this overpayment balance;

(4) You may request that we withhold a different amount (the notice will not include this information if paragraph (e)(3) of this section applies); and

(5) You may ask us to waive collection of this overpayment balance.

(d) *When we will begin cross-program recovery.* We will begin collecting the overpayment balance by cross-program recovery no sooner than 30 calendar days after the date of the notice described in paragraph (c) of this section.

(1) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(2) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery before we review the matter and notify you of our decision in writing.

(3) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when paragraph (e)(3) of this section applies.

(4) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery before we review the matter and notify you of our decision in writing. See §§ 416.550 through 416.556.

(e) *Rate of withholding.* (1) We will collect the overpayment at the rate of 10 percent of the title II benefits payable to you in any month, unless:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(2) In determining whether to grant your request that we withhold at a lower rate than 10 percent of the title II benefits payable in a month, we will use the criteria applied under § 416.571 to similar requests about withholding from title XVI benefits.

(3) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment at the rate of 100 percent of the title II benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

[FR Doc. 01–18592 Filed 7–25–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

RIN 2125–AE87

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices for Streets and Highways; Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Corrections to the final amendments to the Manual on Uniform Traffic Control Devices.

SUMMARY: This document incorporates by reference into the Code of Federal Regulations errata corrections to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is incorporated by reference in the regulations on traffic control devices on Federal-aid and other streets and highways and recognized as the national standard for traffic control on all public roads. These editorial corrections affect the MUTCD in its entirety. These editorial corrections are issued to help improve the readability of the MUTCD, to provide clarification and consistency, and to correct the grammatical, mathematical, and typographical errors. Since the MUTCD is used by all State and local departments of transportation when installing traffic signs, traffic signals, and pavement markings on all roads open to public travel, it is very important that a correct document is available to them.

DATES: The final rule is effective on July 26, 2001. Incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, Room 3408, (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this action may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/

fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

A number of editorial corrections have been identified since the 2000 Millennium Edition of the MUTCD was incorporated by reference on December 18, 2000, at 65 FR 78923. The general scope of these editorial corrections is being provided to the public in this preamble. All of the editorial corrections have been included in the MUTCD text and the corrected MUTCD text is available on the MUTCD Internet site (*http://mutcd.fhwa.dot.gov*). Furthermore, a listing of every errata item is available on this Internet site.

The FHWA believes good cause exists to publish this rule without prior notice and opportunity for public comment. In addition, the FHWA believes good cause exists for making this rule effective immediately and that seeking public comment is unnecessary. The entire MUTCD text has been through a public comment process and those comments are reflected in the current text of the MUTCD. The FHWA believes that it is important to make these errata changes available as soon as possible as motorists, pedestrians, and bicyclists depend on correct traffic control devices for safe travel on our Nation's highways.

Additionally, State and local departments of transportation use the MUTCD daily as they determine when and where to install traffic signs, traffic signals, and pavement markings. Since the MUTCD is used by all State and local departments of transportation when installing traffic signs, traffic signals, and pavement markings on all roads open to public travel, it is critical to the government agencies, other users of the MUTCD, and the traveling public that a correct document is available to ensure the safe and efficient operation on our highways. Furthermore, all of these changes are minor and are not substantive in nature. Therefore, the FHWA believes that good cause exists to make this rule effective immediately upon publication.

Discussion

The FHWA discovered several errors in the MUTCD after the final rule document was published on December 18, 2000. The FHWA received many comments about these errors after publication of the final rule and after commenters viewed the MUTCD. These errors were not substantive in nature, and the FHWA has been able to correct most of them by way of ''pen and ink'' changes to provide text clarification and consistency, and to correct the grammatical, mathematical, and typographical errors. Examples of the errors that were corrected include misspelling of words, the removal of the comma between the month and year of a date, capitalizing the word ''Nation'' when it refers to the United States, the punctuation of items in lists, placing the sign number after the sign name, and before the word sign, and correcting the names of reference documents.

Additionally, in the final rule published on December 18, 2000, the FHWA indicated 288 technical changes relating to the MUTCD based on eight notices of proposed amendments and public comment. Fifteen of the technical changes indicated in the **Federal Register** were not correctly made in the MUTCD text. The following are those technical changes.

1. In Section 1A.05 Maintenance of Traffic Control Devices, under GUIDANCE, the first two paragraphs concerning the maintenance of traffic control devices were inadvertently left out of the MUTCD text in the final rule published on December 18, 2000, at 65 FR 78923. These two paragraphs go before the existing paragraphs. It is very important to give guidance to all jurisdictions on maintaining traffic control devices so that road users may safely use the Nation's highways. Paragraph 1 should read, ''Functional maintenance of traffic control devices should be used to determine if certain devices need to be changed to meet current traffic conditions.'' Paragraph 2 should read, ''Physical maintenance of traffic control devices should be performed to ensure that legibility is retained, that the device is visible, and that it functions properly in relation to other traffic control devices in the vicinity.'' These two paragraphs were in the notice of proposed amendment published on December 30, 1999, at 64 FR 73612, 73619.

2. In Item 12 of the final rule, published on December 18, 2000, at 65 FR 78923, in Section 1A.14 Abbreviations Used on Traffic Control Devices, the FHWA indicated that the statement ''When abbreviations are needed for traffic control devices, the abbreviations shown in Table 1A–1 shall be used'' shall be a STANDARD. Inadvertently, the statement was published as an OPTION in the text of the MUTCD even though it was a STANDARD in the notice of proposed amendment published on December 30, 1999, at 64 FR 73612. The text should read ''STANDARD: When abbreviations are needed for traffic control devices, the abbreviations shown in Table 1A–1 shall be used.''

3. In Section 2A.15 Sign Borders, in the notice of proposed amendment, published on June 11, 1998, at 63 FR 31950, some of the GUIDANCE text was inadvertently omitted from the MUTCD text published on December 18, 2000, at 65 FR 78923. The FHWA did not intend to delete this text and did not discuss deleting it in any of the **Federal Register** notices. The last sentence of the GUIDANCE should read, ''Where practicable, the corners of the sign should be rounded to fit the border, except for STOP signs.''

Additionally, the STANDARD text of Section 2A.15 of the notice of proposed amendment, published on June 11, 1998, at 63 FR 31950 was inadvertently modified in the MUTCD text published on in the December 18, 2000, at 65 FR 78923. The FHWA did not intend to modify this STANDARD text and did not discuss modifying it in any of the **Federal Register** notices. The second sentence of the STANDARD should read, ''The corners of the sign shall be rounded, except for STOP signs.''

4. In Item 31 of the final rule published on December 18, 2000, at 65 FR 78923, in Section 2B.13 Night Speed Limit Sign, the OPTION sentence that reads, ''A changeable message sign that changes for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times'' was identified for deletion from Section 2B.13 Night Speed Limit Sign. Inadvertently, this language was not deleted from Section 2B.13 of the final MUTCD text. Therefore, this sentence has been deleted from the OPTION statement of Section 2B.13. In the incorrect text, this sentence was the second item of a two-item list. In deleting this sentence, resulting in only one item remaining in the list, the lead in phrase is superfluous and has been deleted. The statement, ''A changeable message sign that changes for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times'' correctly appears in the MUTCD text in Section 2B.11 Speed Limit Sign.

5. In Section 2C.21 BUMP and DIP Signs (W8–1 and W8–2) of the final rule, published on December 18, 2000, at 65 FR 78923, in the MUTCD text in the second GUIDANCE statement, the phrase, ''when centerline striping is provided on a two-lane road'' was inadvertently added to the MUTCD text. This phrase should be deleted from the text as the language was never proposed and was inadvertently included in the MUTCD text.

6. In Section 2C.23 Pavement Ends Sign (W8–3), in the notice of proposed

amendment published on June 24, 1999, at 63 FR 33806, the FHWA proposed replacing the Pavement Ends symbol sign with a PAVEMENT ENDS word sign. Inadvertently, the final rule published on December 18, 2000, at 65 FR 78923 did not contain this change. The FHWA did not intend to omit this in the final rule. However, the MUTCD text was changed appropriately. As stated in the notice of proposed amendment published on June 24, 1999, at 64 FR 33806, the word message replaces the symbol sign and a 10-year compliance period is provided so that State and local agencies can replace their existing symbol signs with word message signs. Like the December 18, 2000, MUTCD, this change went into effect on January 17, 2001, for all new installations.

7. In Section 2C.30, Lane Ends Sign (W9–1 and W9–2), in the notice of proposed amendment published on June 24, 1999, at 64 FR 33806, the FHWA proposed changing the name of the Lane Reduction Transition Signs to Lane Ends signs. The change was made in the title of Section 2C.30 in the final rule published on December 18, 2000, at 65 FR 78923; however, the FHWA inadvertently left out the name change when referring to the W4–2 sign in the first sentence of the first OPTION paragraph in this section. This sentence now reads, ''The RIGHT (LEFT) LANE ENDS (W9–1) sign may be used in advance of the LANE ENDS (W4–2) sign or the LANE ENDS MERGE LEFT (RIGHT) (W9–2) sign as additional warning or to emphasize that the traffic lane is ending and that a merging maneuver will be required.''

8. In Section 2E.28, Interchange Exit Numbering, paragraph 2 (incorrectly labeled as Section 2E.29 in the final rule published on December 18, 2000, at 65 FR 78923) the FHWA inadvertently included conflicting language as to vertical dimension of the exit number sign panel. In Item 83 of the final rule, the FHWA indicated correctly that it decided to adopt the proposed amendment to Section 2E.28, paragraph 2. The amendment proposed to increase the vertical dimension of the exit number sign panel from 600 mm (24 inches) to 750 mm (30 inches). In direct conflict to this statement, the FHWA indicated in Item 124 of the final rule that the vertical dimension of the exit number panel would not be increased from 600 mm (24 inches) to 750 mm (30 inches). Unfortunately, Item 124 was incorrectly included in the preamble language to the final rule as the FHWA's intent is to adopt the change because it improves the visibility of critical sign information for directing the road users to their destinations. The FHWA's intent to adopt this change is evidenced by the fact that the final MUTCD text reflects this decision and contained the proposed amended measurements of 750 mm (30 inches), not the previous standard of 600 mm (24 inches). The MUTCD text correctly reads 750 mm (30 inches) as the vertical dimension of the exit number sign panel.

9. In Section 2E.32, Other Supplemental Guide Signs, paragraph 2, the FHWA proposed changing a STANDARD statement, ''No more than one Supplemental Guide sign shall be used on each interchange approach,'' to a GUIDANCE statement in both the notice of proposed amendment, published on June 11, 1998, at 63 FR 31950, and in the final rule published on December 18, 2000, at 65 FR 78923. Inadvertently, the FHWA did not include this change from a STANDARD to a GUIDANCE in the final MUTCD text. The corrected sentence is a GUIDANCE statement reading ''No more than one Supplemental Guide sign should be used on each interchange approach.'' Also, the word ''shall'' has been changed to ''should'' to reflect that this is a GUIDANCE.

10. In Part 6 Temporary Traffic Control, in the final rule published on December 18, 2000, at 65 FR 78923, the FHWA indicated that in six sections of Part 6 it was changing a ''SUPPORT statement to a STANDARD statement, as the statement is a definition, and definitions are by their very nature STANDARDS.'' Inadvertently, this was not done in the following:

a. The first SUPPORT paragraph of Section 6C.07;

b. The first SUPPORT paragraph of Section 6E.01;

c. The first paragraph of the first SUPPORT paragraph of Section 6F.52;

d. The first SUPPORT paragraph of Section 6F.53;

e. The first paragraph of the first SUPPORT paragraph of Section 6F.55; and

f. The first paragraph of the third SUPPORT paragraph of Section 6F.76.

These SUPPORT statements are all changed to accurately reflect that they are STANDARDS.

11. In Section 6F.76 Crash Cushions, in the final rule published on December 18, 2000, at 65 FR 78923, the FHWA indicated that it was changing the seventh paragraph from a STANDARD statement to a GUIDANCE statement to provide more flexibility in the spacing of the shadow vehicle behind the workers and their work vehicles to allow for sufficient space to accomplish the required maintenance. Inadvertently, this change was not reflected in the final MUTCD text. This STANDARD statement is changed to accurately reflect that it is GUIDANCE.

12. In Section 6G.05 Work Outside of Shoulder, in the final rule published on December 18, 2000, at 65 FR 78923, the FHWA indicated that the second GUIDANCE statement would be changed to an OPTION statement. Inadvertently, this was not done in the MUTCD text. This GUIDANCE statement is changed to accurately reflect that it is an OPTION in the MUTCD text. Also, the word ''should'' has been changed to ''may'' to reflect that this is an OPTION.

13. In Section 9B.04 Bicycle Lane Signs (R3–16, R3–17), in the final rule published on December 18, 2000, at 65 FR 78923, the FHWA inadvertently included conflicting language as to the proper phase-in period for compliance with the section. In Item 245 of the final rule, the FHWA indicated that it is providing a phase-in compliance period of 5 years after the effective date of the final rule. This 5-year phase-in period is to minimize any impact on the State and local highway agencies. However, in Item 247 of the final rule, in the discussion of FHWA's intent to delete the preferential lane symbol (diamond) for bicycle signs and pavement markings, we inadvertently indicated that the phase-in period for compliance with this requirement was 6 years. This was in error. The correct phase-in period is 5 years as stated in Item 245 of the final rule.

14. In Item 253 of the final rule, published on December 18, 2000, at 65 FR 78923, in the language used to describe the change to Section 9B.15 Bicycle Crossing Warning Sign (W11–1), the FHWA used the word ''requiring'' when describing the use of a bicycle crossing warning sign. Specifically, the final rule stated that, ''In an advance crossing situation, the FHWA is requiring using a crossing sign supplemented with an 'AHEAD' or 'XX FEET' plaque.'' The use of the word ''requiring'' was in error as this condition is an OPTION not a STANDARD as the language implies. The FHWA's intent was to have this language read as an option as evidenced by the fact that the MUTCD text correctly states the following: ''OPTION: A supplemental plaque with the legend AHEAD or XXX METERS (XXX FEET) may be used with the Bicycle Crossing Warning sign.'' The use of the words ''option'' and ''may'' within the statement clearly indicate that this is not a standard, but rather an option as is the FHWA's intent.

15. In Item 257 of the final rule, published on December 18, 2000, at 65

FR 78923, in Part 9 Traffic Controls for Bicycle Facilities, the FHWA indicated that the title of Figure 9B–2 had been revised by replacing the word ''typical'' with ''example of'' and now reads, ''Example of Signing for the Beginning and End of a Bicycle Route.'' The change was made because the Figure 9B–2 may not be considered a ''typical'' drawing. Inadvertently, this was not made to the MUTCD text. The change is now added to the Figure 9B–2 of the MUTCD text.

Rulemaking Analysis and Notices

The FHWA's issuance of this rule without prior notice and opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Seeking public comment is impracticable and unnecessary.

The FHWA believes that further opportunity for public comment on these minor non-substantive changes is unnecessary because these errata changes are only minor changes and are not substantive in nature. These changes are to correct the grammatical, mathematical, and typographical errors. Additionally, the MUTCD was published on December 18, 2000, at FR 78923 after several extensive comment periods for the public to comment on each of the ten parts of the MUTCD [62 FR 54598, 62 FR 64324, 63 FR 31950, 64 FR 33802, 64 FR 33806, 64 FR 71358, 64 FR 73606, and 64 FR 73612]. Therefore, because of the minor nature of these errata changes and the previous extensive public comment period provided for each of the MUTCD sections, the FHWA believes that providing prior notice to the public is unnecessary.

For the same reasons stated above, the FHWA has determined that it has good cause to make this document effective immediately upon publication today in the **Federal Register**. Additionally, because the MUTCD is used by all State and local departments of transportation when installing traffic signs, traffic signals, and pavement markings on all roads open to public travel, it is very important that a correct MUTCD document is available to them immediately.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The FHWA has determined that the economic impact of this rulemaking will be minimal. These errata changes are minor and not substantive in nature and they do not change the meaning in the final rule. The standards and guidance, which these errata affect, provide additional guidance, clarification and optional applications for traffic control devices and were effective on January 17, 2001. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards and guidance are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This action corrects the grammatical, mathematical, and typographical errors of the standards and guidance on the design and installation of traffic control devices contained in the MUTCD. It further corrects other text that was inadvertently not changed in the MUTCD text but was changed according to the final rule published on December 18, 2000, at 65 FR 78923. The FHWA hereby certifies that these revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This action of correcting the grammatical, mathematical, and typographical errors would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action merely corrects the grammatical, mathematical, and typographical errors of the standards and guidance on the design and installation of traffic control devices contained in the MUTCD. The FHWA has also determined that this action would not preempt any State law or regulation or affect the State's ability to discharge traditional State government functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This action merely corrects the grammatical, mathematical, and typographical errors of the standards and guidance on the design and installation of traffic control devices contained in the MUTCD. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This action 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.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

Issued on: July 12, 2001.

Christine M. Johnson,

Program Manager, Operations.

The FHWA hereby amends part 655 of chapter I of title 23, Code of Federal Regulations as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, FHWA, dated December 18, 2000, including Errata No. 1 to MUTCD 2000 Millennium Edition dated June 14, 2001. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These documents are available for inspection and copying at the Federal Highway Administration, Room 3408, 400 Seventh Street, SW., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the Federal Highway Administration's website at: *http://mutcd.fhwa.dot.gov*.

* * * * *

[FR Doc. 01–18247 Filed 7–25–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1345

[Docket No. NHTSA–01–10154]

RIN 2127–AH40

Occupant Protection Incentive Grants

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document announces that the regulations that were published in an interim final rule to implement an occupant restraint program established by the Transportation Equity Act for the 21st Century (TEA 21) will remain in effect, with some modifications. Under the final rule, States can qualify for incentive grant funds if they adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

DATES: This final rule becomes effective on July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Tetrault, Office of State and Community Services, NSC–01, NHTSA, 400 Seventh Street, SW., Washington DC 20590; telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. Section 2003 of the Act established a new incentive grant program under Section 405 of Title 23, United States Code (Section 405). Under this program, States may qualify for incentive grant funds by adopting and implementing effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. The program was designed to stimulate increased seat belt, child safety seat and booster seat use.

Background

Effectiveness of Occupant Protection Systems

Injuries caused by motor vehicle traffic crashes in America are a major health care problem and are the leading cause of death for people aged 5 to 35. Each year injuries caused by traffic crashes in the United States claim approximately 41,000 lives and cost Americans an estimated $150 billion. Seat belts are an effective means of reducing fatalities and serious injuries when traffic crashes occur. Seat belts are estimated to save nearly 11,000 lives each year. Lap and shoulder belts reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate to critical injury by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate to critical injury by 65 percent.

Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 1999, there were 550 occupant fatalities among children under 5 years of age. Of those 550 fatalities, an estimated 291 (53 percent) were totally unrestrained. From 1975 through 1999, an estimated 4,500 lives were saved by the use of child restraints (child safety seats or adult belts). In 1999, an estimated 307 children under age 5 were saved as a result of child restraint use.

America's Experience With Seat Belts and Child Safety Seats

The first seat belts were installed by automobile manufacturers in the 1950s. Until the mid-1980s, seat belt use was very low—only 10 to 15 percent nationwide. From 1984 through 1987, belt use increased from 14 percent to 42 percent, as a result of the passage of seat belt use laws in 31 States. Belt use is now mandated in 49 States, the District of Columbia, Puerto Rico and the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands), but only 17 States, the District of Columbia, Puerto Rico and the U.S. Territories allow law enforcement officials to stop a vehicle solely on the basis of observing a seat belt violation. Most States require that another violation must first be observed (i.e., secondary enforcement) before seat belt law violators can be stopped and issued a citation. Under these conditions, national seat belt usage has reached its current (2000) level of 71 percent, and is increasing slowly (currently about 2 percentage points per year).

The first law requiring children to be in child safety seats was enacted in 1978 in Tennessee. By 1985, all 50 States and the District of Columbia had passed child passenger laws. Statewide reported usage rates currently range between 60 and 90 percent, depending on the age of the child. Most safety seats, however, are used improperly to some degree.

Presidential Initiative To Increase Seat Belt and Child Safety Seat Usage

In 1997, NHTSA was directed by a Presidential Initiative to Increase Seat Belt Usage Nationwide (Presidential Initiative) to achieve a seat belt use rate of 85 percent by the year 2000 and a 90 percent seat belt use rate by 2005. The agency was further directed to reduce child occupant fatalities (0–4 years) by 15 percent in the year 2000 and by 25 percent in 2005. The national seat belt use rate reached 71 percent and the number of child occupant fatalities (0–4 years) were reduced by more than 15 percent by 1999 and by more than 17 percent by 2000. The agency continues to work toward achieving a seat belt use rate of 90 percent and reducing child occupant fatalities an additional 8 percent by 2005.

The Presidential Initiative contained a four-point strategy to meet its goals. The first point in the strategy is to build public/private partnerships to address the issue of seat belt and child safety seat use. In addition, the strategy calls for States to enact strong laws and to embrace active, high-visibility enforcement. Finally, the strategy calls for public and private partners to conduct well-coordinated, effective public education. The occupant protection incentive grant program enacted by Congress as part of TEA 21 reinforces these elements by encouraging States to adopt and strengthen seat belt use laws (including laws that provide for primary, or standard, enforcement) and child safety seat use laws, conduct high visibility enforcement, and establish education programs.

TEA 21 Section 405 Program

Section 405 provides that the Secretary of Transportation shall make grants to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

Interim Final Rule

On October 1, 1998, NHTSA published an interim final rule in the **Federal Register** to implement the Section 405 program. The interim final rule explained that, to qualify for funding under the Section 405 program, a State must adopt or demonstrate at least four of the following six criteria: a seat belt use law; a primary (standard enforcement) seat belt use law; minimum fines or penalty points against the driver license of an individual for a violation of the State's seat belt use law and for a violation of the State's child passenger protection law; a special traffic enforcement program; a child passenger protection education program; and a child passenger protection law. The interim final rule defined the elements of the grant criteria and the manner in which States must demonstrate compliance, as described below.

Grant Criteria

1. Seat Belt Use Law

A State must have in effect a seat belt use law that makes unlawful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in the front seat of the vehicle (and, beginning in fiscal year 2001, in any seat in the vehicle) does not have a seat belt properly secured about the individual's body.

2. Primary Seat Belt Use Law

A State must provide for the primary (or standard) enforcement of its seat belt use law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense.

3. Minimum Fine or Penalty Points

A State must impose a minimum fine or provide for the imposition of penalty points against the driver's license of an individual for a violation of the seat belt use law of the State and for a violation of the child passenger protection law of the State. The interim regulations provided that the minimum fine shall mean a total monetary penalty of at least $25.00, which may include fines, fees, court costs or any other monetary assessments collected.

4. Special Traffic Enforcement Program

A State must provide for a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program. The term ''Special Traffic Enforcement Program'' (STEP) references a model program that NHTSA recommends for State and community implementation because it has proven to be effective in increasing seat belt use at both statewide and community levels. STEPs combine public education, publicity and intensified enforcement to increase seat belt and child safety seat use rates.

5. Child Passenger Protection Education Program

A State must plan to implement a statewide comprehensive child passenger protection education program that includes education programs about proper seating positions for children in air bag equipped motor vehicles and instruction on how to reduce the improper use of child restraint systems.

6. Child Passenger Protection Law

A State must have in effect a law that requires minors who are riding in a passenger motor vehicle to be properly secured in a child safety seat or other appropriate restraint system.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 52592–95).

Terms Governing the Incentive Grant Funds

The interim final rule indicated that a total of $68 million has been authorized for the Section 405 program over a period of five years, beginning in fiscal year 1999. Specifically, TEA 21 authorized $10 million for fiscal year 1999, $10 million for fiscal year 2000, $13 million for fiscal year 2001, $15 million for fiscal year 2002 and $20 million for fiscal year 2003. In fiscal year 1999, 38 States, the District of Columbia, Puerto Rico and 3 U.S. territories received grants totaling $9.5 million and, in fiscal year 2000, 38 States, the District of Columbia, Puerto Rico and 2 U.S. territories received grants totaling $9.5 million.

Under Section 405, States are required to match the grant funds they receive as follows: the Federal share cannot exceed 75 percent of the cost of implementing and enforcing the occupant protection program adopted to qualify for these funds in the first and second fiscal years the State receives funds; 50 percent in the third and fourth fiscal years it receives funds; and 25 percent in the fifth and sixth fiscal years.

No grant may be made to a State unless the State certifies that it will maintain its aggregate expenditures from all other sources for its occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or federal fiscal year 1996 and 1997 can be used). As was stated in the interim final rule, the agency will accept soft matching in Section 405's administration, meaning that the State's share may be satisfied by the use of

either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies.

Award Procedures

To receive a grant in any fiscal year, the interim final rule indicated that each State is required to submit an application to NHTSA, through the appropriate NHTSA Regional Administrator, which demonstrates that the State meets the requirements of the grant being requested. In addition, the State must submit a certification. A more detailed discussion regarding the contents of the certifications is contained in the interim final rule (63 FR 52595–96).

The interim final rule indicated that in both the first and in subsequent years, once a State has been informed that it is eligible for a grant, the State must include documentation in the State's Highway Safety Plan, prepared under Section 402, that indicates how it intends to use the grant funds. The documentation must include a Program Cost Summary (HS Form 217) obligating the section 405 funds to occupant protection programs.

To be eligible for grant funds in fiscal year 1999, the interim rule provided that States had to submit their applications no later than August 1, 1999. To be eligible for grant funds in any subsequent fiscal years, States must submit their applications no later than August 1 of the fiscal year in which they are applying for funds. The agency strongly encouraged States to submit all of these materials in advance of the regulatory deadlines.

As the agency explained in the interim final rule, the release of the full grant amounts under Section 405 shall be subject to the availability of funding for that fiscal year.

If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA stated in the interim final rule that it may release less than the full grant amounts upon initial approval of the State's application and documentation, and the remainder of the full grant amounts up to the State's proportionate share of available funds, before the end of that fiscal year.

However, based on the agency's experience administering this grant program as well as the other grant programs that were authorized under TEA 21 in fiscal years 1999 and 2000, NHTSA has determined that it is not necessary to release funds in two stages. Accordingly, in FY 2001 and in each fiscal year thereafter, all Section 405 funds will be released at the same time. Since applications for Section 405 funds are due each fiscal year by August 1, the funds will be awarded near the end of each fiscal year (no later than September 30).

If there are insufficient funds to award the full grant amounts to all eligible States in any fiscal year, NHTSA will award each State its proportionate share of available funds. As stated in the interim final rule, project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

As explained in the interim final rule, if any funds remain available under 23 U.S.C. Sections 405, 410 and 411 at the end of a fiscal year, the Secretary may transfer these funds to the amounts made available under any other of these programs to ensure, to the maximum extent possible, that each State receives the maximum incentive funding for which it is eligible.

Request for Comments

The agency requested comments from interested persons on the interim final rule that was published in October 1, 1998. Comments were due by November 30. The agency stated in the interim final rule that all comments submitted to the agency would be considered and that, following the close of the comment period, the agency would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of Part 1345.

Comments Received

The agency received submissions from seven commenters in response to the interim final rule. Comments were received from Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates) and six states. The State comments were submitted by Betty J. Mercer, Division Director, Office of Highway Safety Planning, Michigan Department of State Police (Michigan); Albert E. Goke, Chief of the Montana Traffic Safety Bureau, Governor's Representative for Highway Traffic Safety (Montana); Ken Carpenter, State of New York, Governor's Traffic Safety Committee, Department of Motor Vehicles (New York); Thomas E. Bryer, P.E., Director of the Pennsylvania Bureau of Highway Safety & Traffic Engineering (Pennsylvania); James R. Grate, Manager, West Virginia Highway Safety Program (West Virginia); and Charles H. Thompson, Secretary of the Wisconsin Department of Transportation (Wisconsin). The comments, and the agency's responses to them, are discussed in detail below.

1. General Comments

Some of the comments received in response to the interim final rule were positive. For example, Montana welcomed the addition of this incentive grant program and Advocates stated that it is ''supportive of any legislative or agency initiated efforts to increase seat belt use rates. Seat belt use is the most effective means of ensuring occupant protection in most crash modes.'' Advocates stated also that it ''generally supports NHTSA's approach in the interim final rule and the criteria adopted by NHTSA in this rule.''

Additional comments related to the specific requirements that States must meet to qualify for a grant. These comments, and the agency's response to them, are discussed specifically below.

2. Seat Belt Use Law Criterion

The interim final rule provided that, to meet the seat belt use law criterion beginning in FY 2001, a State's seat belt use law must require seat belt use in all seating positions in a vehicle. Michigan commented that resistance to seat belt use laws will make it difficult for many States to upgrade laws to all seating positions. Although Michigan recognized that the requirement for such laws was included in the statute, it asserted that ''NHTSA should recognize that States will need considerable assistance in strategic planning and garnering general public support if upgraded belt laws are to become a reality in this country.''

The agency agrees that States may need technical assistance, such as data on injuries and fatalities involving unbelted occupants riding in rear seating positions, to help gain public support for such laws and the agency is prepared to provide such assistance. However, the purpose of the Section 405 program, and the seat belt use law criterion, was not merely to reward the status quo, but rather to provide an incentive for States to strengthen their laws and improve their programs. Moreover, even if States are not able to pass enhanced seat belt use laws, they still may qualify for funds under Section 405 by meeting four out of the remaining five criteria.

The interim rule indicated that the agency had decided to permit exceptions in seat belt use laws for persons with medical excuses; postal, utility and other commercial drivers who make frequent stops in the course of their business; emergency vehicle operators and passengers; persons riding in positions not equipped with seat

belts; persons in public and livery conveyances; persons riding in parade vehicles; and persons in the custody of police.

Advocates supported some of these exceptions, but disagreed with the agency's decision to permit exceptions for utility and other commercial drivers who make frequent stops in the course of their business. Advocates stated that, ''despite the adoption of such an exemption in some state laws, this exemption is vague, since the term 'frequent stops' is not defined, and is based on convenience rather than necessity. Exemptions from safety regulations should not be based on practical convenience, especially where the exceptions may undermine the general requirement.''

As the agency noted in the interim final rule, prior to the issuance of that document, the agency had reviewed existing State occupant protection laws to determine whether they contained any exceptions. We determined that a number of States made it unlawful for an individual to ride unrestrained in a motor vehicle, but provided an exception for utility or other commercial drivers who make frequent stops in the course of their business.

Although the Section 405 statute did not specifically provide for such an exception, the agency did not believe it was Congress' intent that the statute be read so literally as to penalize every State whose laws contained any exceptions at all. Accordingly, the agency considered whether this exception, and the others found in State laws at that time, would either be incompatible with the language of the statute or would so severely undermine the safety considerations underlying the statute so as to render a State whose law contains the exception ineligible from the incentive grant program.

In the agency's view, the exception that permits utility or other commercial drivers to ride unrestrained is limited and addresses a legitimate need for convenience in certain circumstances. In addition, we believe that this exception is not inconsistent with the language of the statute and would not severely undermine the safety considerations underlying the statute. We continue to believe that such an exception should be permitted.

Accordingly, this portion of the interim regulation is adopted without change.

3. Primary Seat Belt Use Law Criterion

Michigan commented that it will be difficult for States with secondary enforcement laws to upgrade to primary enforcement laws and that many States will be unable to meet the primary belt use law criterion within the period of eligibility. Michigan stated that ''resources and expertise should be gathered to develop a workable successful approach to attaining a national change in attitude among the general public about these laws.''

Advocates, on the other hand, supported the primary seat belt use law criterion. It stated that ''such laws are generally considered the single most effective means of increasing state seat belt use rates, especially when combined with heightened enforcement and publicity.''

The agency firmly believes that primary seat belt use laws, especially when they are actively enforced with high visibility, represent the most effective means of increasing seat belt use rates. Studies indicate that, overall, States with primary seat belt use laws achieve significantly higher seat belt use rates (NHTSA, 1999). For example, the June 2000 National Occupant Protection Use Survey (NOPUS) shows that the average seat belt use rate in States with primary enforcement laws was 77 percent, while the average seat belt use rate in States with secondary enforcement laws was only 63 percent.

Further, the public's support for primary enforcement of seat belt laws appears to be increasing. According to a 1998 NHTSA survey on attitudes toward the enforcement of State seat belt laws, 58 percent of those surveyed believed that law enforcement officials should be allowed to stop a vehicle if a seat belt violation is observed, an increase from 52 percent in 1996 (Motor Vehicle Occupant Safety Survey, 1998). In addition, a survey conducted in 1997 by Public Opinion Strategies found that 61 percent of those surveyed supported primary enforcement of seat belt use laws.

Moreover, as stated previously regarding the seat belt use law criterion of the Section 405 program, the purpose of the program, and the primary seat belt use law criterion, was not merely to reward the status quo, but rather to provide an incentive for States to strengthen their laws and improve their programs. In addition, even if States are not able to enact enhanced seat belt use laws, they may still qualify for funds under Section 405 by meeting four out of the remaining five criteria.

For all of these reasons, this portion of the interim regulation is adopted without change.

4. Minimum Fine or Penalty Points Criterion

To qualify under the minimum fine or penalty points criterion, a State must impose a minimum fine or provide for the imposition of penalty points against the driver's license of an individual for a violation of the seat belt use law of the State and for a violation of the child passenger protection law of the State. The interim final rule provided that the term ''minimum fine'' means ''a total monetary penalty that may include fines, fees, court costs, or any other additional monetary assessments collected.'' The interim rule provided further that the minimum fine must amount to ''not less than $25.00.''

The agency received three comments objecting to the $25 minimum fine set by the agency. Wisconsin commented that ''the interim final rule arbitrarily establishes $25 as the minimum monetary penalty * * *'' It recommended instead that each State should be allowed to set its own minimum fine and stated that the minimum fine ''should be set at the lowest non-zero monetary penalty being used by any State,'' which it believed to be $10. Wisconsin indicated that ''relative to many traffic law violations, both $10 and $25 are rather nominal monetary penalties, and the difference between the two figures is hardly worth the political capital that would be required to convince a state legislature to increase the fine from the lower level to the higher level. The interim final rule should not penalize states that have had 'a' monetary penalty, albeit under $25, in place for many years.''

Montana also objected to the $25 minimum fine, stating that ''significant fines in rural states surely are not as high as those imposed in highly urban areas. Typically, rural states with lower incomes and lesser densities enact fines suited to their own conditions.'' Montana noted that a $20 fine is the average fine imposed in that State for a variety of traffic penalties. Further, Montana stated that ''you remember when Montana was known for its $5.00 energy conservation fine imposed on drivers for speeding. That small fine was sufficient to maintain deterrence in our driving majority to avoid speeding, to remind the public of its driving responsibilities, and I believe to contribute to our success in achieving safety restraint usage rates at a high level of compliance.'' Montana proposed that the minimum fine level be set at $20, which would allow it to comply with the minimum penalty requirement.

West Virginia commented that ''NHTSA has overstepped their authority by interpreting what Congress meant by the term 'minimum' and setting that minimum amount at $25.'' The State expressed its belief that

Congress' intent was to allow each individual State to decide what its minimum fine should be.

By contrast, Advocates asserted that the minimum $25 fine was insufficient. It stated that, ''such a low penalty threshold sends the message that seat belt and child restraint laws are trivial matters * * *.'' Advocates stated that it was ''not convinced that fines of $25, even when accompanied by court fees and costs, comprise a sufficient deterrent to violations of belt and child restraint use laws.'' It asserted that the agency should not ''merely adopt a minimum fine level that represents the current lowest common denominator in existing practice,'' but instead should adopt a minimum fine level that will ''encourage States to achieve higher standards of belt use through tougher State law requirements, including sanctions.''

Advocates argued also that because the interim regulation allowed a State to demonstrate compliance with the minimum fine criterion through laws, regulations or binding policy directives, or ''as a matter of general judicial practice without specification in state law,'' the criterion could be met ''by nearly any State law and does not require improvements in State action or enforcement.''

Lastly, Advocates asserted that low level monetary fines are not an equivalent to penalty points on a license. Although Advocates recognized that the statute allows State laws to qualify if they establish a minimum fine, it stated that this ''does not mean that the regulatory criteria should specify a fine that is minimal.''

After considering carefully all of the comments received regarding this criterion, NHTSA has decided that it will not change the $25.00 minimum fine requirement. As indicated in the interim final rule, the agency believes that it would be inconsistent with Congressional intent to allow States who provide for nominal or insignificant penalties to qualify for incentive grant funds with this criterion. At the same time, the agency does not want to set a minimum fine level that would prohibit rural States or States with higher poverty levels from reasonably meeting this criterion. During its review of State laws, the agency found that many States set a maximum fine level but did not establish a minimum fine for seat belt or child restraint violations. The agency determined that setting a $25 minimum fine level would challenge States to establish stronger standards for seat belt and child restraint violations, without imposing unreasonable burdens. While the regulation sets forth minimum penalties for seat belt use and child restraint violations, States are free to enact more severe penalties.

With respect to Advocates' comments regarding the importance of penalty points, the agency agrees that penalty points are an effective sanction for individuals who fail to use seat belts and child restraints. However, as Advocates acknowledged, the statute specifically provides that States may qualify under the minimum fine or penalty points criterion by assessing either a minimum fine or penalty points or both. Accordingly, the agency is not at liberty to require that States assess penalty points to qualify for a Section 405 grant.

Two States (New York and Pennsylvania) questioned whether their practice of waiving fines imposed for violations of the child passenger protection law, in cases where a violator presents proof of purchase of a child restraint system, would be permitted under the agency's regulations. During its review of FY 1999 grant applications, the agency determined that a State whose law contained such an exception would not be rendered ineligible from qualifying for a grant under the minimum fine or penalty points criterion if the State's law otherwise met the elements of this criterion. We have added language to the final rule, to reflect this determination.

5. Special Traffic Enforcement Program Criterion

The interim final rule provided that, to qualify under the Special Traffic Enforcement Program criterion, a State must provide for a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program. The interim rule indicated that the term ''Special Traffic Enforcement Program'' (STEP) references a model program that NHTSA recommends for State and community implementation because it has proven to be effective in increasing seat belt use at both statewide and community levels.

Michigan commented that the Section 405 statute does not emphasize ''*S*pecial *T*raffic *E*nforcement *P*rogram (STEP), but uses the term 'special traffic enforcement program' which could mean any number of statewide programs conducted in a manner other than the NHTSA STEP enforcement model.'' Although it expressed its support for the requirement that STEP programs must reach 70% of a State's population and that States must describe the statewide nature of their programs, it asserted that ''requiring a STEP model be implemented, however, does not permit the states the flexibility needed to tailor such a program to the needs and political climate of the state.'' It asserted that ''the STEP approach has not been documented to be effective in all locations in the country, especially those states without standard enforcement laws or without the ability to conduct enforcement checkpoints.''

Michigan recommended that the criterion should be modified to allow States to qualify ''by demonstrating there is a special statewide enforcement program, i.e., 'belt saturation patrol', in place that reaches a specified population base and includes a statewide publicity campaign, not require that it follow a STEP enforcement model.''

Advocates expressed its support for the STEP criterion, stating that ''we believe that STEP activities are reasonably calculated to improve safety belt use rates and, if properly conducted based on the requirements set forth in the interim final rule, should serve to improve seat belt use rates in the near term. We believe that such programs have previously proven effective because they focus states resources and activities on seat belt use and achieving a specific goal.''

As we stated in the interim final rule, States may conduct any enforcement activity, including saturation patrols, as long as the State's enforcement efforts call for specified periods of intensified enforcement in defined patrol areas, coupled with statewide publicity to draw attention to the enforcement efforts, and are carried out in jurisdictions that reach 70% of the State's population.

The agency believes that the requirements in the interim rule are sufficiently flexible to ensure that States are permitted to use any enforcement strategy available to them. Accordingly, we will not make any changes to the interim regulations in response to Michigan's comment.

The agency notes that this portion of the regulation uses the term ''police.'' Recognizing that law enforcement activities are conducted by police and also by law enforcement officials who perform their duties under other titles, the agency has replaced the term ''police'' each time it appears in this portion of the regulation with the phrase ''law enforcement officials.'' No other changes have been made to this portion of the regulation in this final rule.

6. Child Passenger Protection Education Program Criterion

The interim final rule provided that, to qualify under the child passenger protection education program criterion,

a State must plan to implement a statewide child passenger protection education program that meets the following elements: (1) The program must provide information to the public about proper seating positions for children in air bag equipped motor vehicles, the importance of restraint use, and instruction on how to reduce the improper use of child restraint systems; (2) the program must provide for child passenger safety training and retraining to establish or update child passenger safety technicians, police officers, fire and emergency personnel and other educators to function at the community level for the purpose of educating the public about proper restraint use and to teach child care givers how to install a child safety seat correctly, and the training should encompass the goals and objectives of NHTSA's Standardized Child Passenger Safety Technician Curriculum; (3) the program must provide for periodic child safety seat clinics conducted by State or local agencies (health, medical, hospital, enforcement, etc.); and (4) each of the State's program activities (with the exception of the training and retraining activities) must cover at least 70% of the State's population; that is, the public information and clinic components of State programs must reach counties or other subdivisions of the State that collectively contain at least 70% of the State's population.

Advocates asserted that the agency needed to ''provide some objective performance goals'' under this criterion. It stated that, ''while this aspect of the program is well intentioned, none of the requirements stated in the interim final rule, with the exception of the need to cover 70% of the state population, have quantifiable goals or objective threshold levels against which performance can be assessed.'' As a result, Advocates asserted that, ''this criterion is easy for a state to meet but difficult for the agency to evaluate in terms of effectiveness and performance.''

The agency believes that the requirements contained in the interim final rule are sufficient to ensure that the States establish meaningful child passenger protection programs. As Advocates acknowledged in their comments, each of the State's program activities (with the exception of the training and retraining activities) is required to cover at least 70% of the State's population. In addition, to demonstrate compliance with the public information program component in the first fiscal year in which a State wishes to qualify for a grant based on this criterion, it must submit a sample or synopsis of the content of planned public information program and the strategy that it plans to use to reach 70% of the targeted population. To demonstrate compliance with the training component, the State must submit a description of the activities it will use to train and retrain child passenger safety technicians and others, and it must provide the durations and locations of such training activities. Also, States must estimate the approximate number of people who will participate in the training and retraining activities and submit a plan for conducting clinics that will serve at least 70% of the population.

Additional requirements are imposed on States in subsequent fiscal years. To demonstrate compliance with the child passenger program criterion after the first fiscal year a State receives a grant based on this criterion, States must submit an updated plan for conducting a child passenger protection education program in the following year and information documenting that the prior year's plan was effectively implemented. The information must document that a public information program, training and child safety seat clinics were conducted; identify which agencies were involved; and indicate the dates, durations and locations of these programs.

The agency believes that these criteria are sufficient to ensure that meaningful child passenger protection education programs will be established. These requirements also will enable the agency to determine whether a State's child passenger safety initiatives are broad based and serve populations most in need of child passenger safety information. Accordingly, the agency has decided not to add any new compliance criteria in response to Advocates' comments.

Michigan commented that ''the NHTSA Standardized Child Passenger Safety technical training has been in place for a relatively short period of time. Because training for certification takes considerable time, the reality is that States will not be in a position to have the required number of instructors needed to reach 70% of the population in the first years of the eligibility period.'' To better accommodate the time needed to develop a network of trained child passenger safety instructors, Michigan encouraged the agency to adopt a more graduated approach to reaching the targeted population. Michigan encouraged the agency to amend the interim regulations to require that in fiscal year 2000, the State's training programs reach 50% of the targeted population; in fiscal year 2001, the State's programs reach 60% of the State's population; and in fiscal year 2002, the State's programs reach 70% of the State's population.

The interim final rule did not require that a State's training and retraining activities cover 70% of the State's population. The interim regulations provided that a State's public information and clinic programs must reach 70% of the State's population, but they specifically excluded the training component of a State's child passenger education program from this requirement. Moreover, as of January 2001, there were more than 14,000 certified child passenger safety technicians trained under the NHTSA/AAA Standardized child passenger safety (CPS) training course, and more than 850 technician instructors. Accordingly, the agency is confident that the infrastructure of trained and certified CPS professionals is sufficient to meet the needs throughout the country. NHTSA has provided funding to States to help develop this infrastructure and States are continuing to dedicate highway safety grant funds to expand CPS training, education and outreach, as needed. Accordingly, the agency did not modify the interim final rule in response to this comment.

Pennsylvania questioned the requirement that States submit a sample or synopsis of the contents of the planned public information program and the strategy that will be used to ''reach 70% of the targeted population.'' Specifically, Pennsylvania requested that the agency clarify the meaning of the term ''targeted population.''

The agency agrees that this portion of the interim final rule should be clarified. The agency believes that the public information component of a State's child passenger protection program should cover 70% of the State's total population and that the clinic component should cover 70% of a targeted population. The agency recognizes that 70% of a State's total population does not have children of child safety seat or booster seat age. Accordingly, States should not be required to conduct clinics reaching 70% of their total population.

The agency has modified the regulation to require that a State's clinic program be designed to reach at least 70% of a targeted population, and the term ''targeted population'' has been defined to mean ''a specific group of people chosen by the State to receive instruction on proper use of child restraint systems.'' The regulation also has been modified to require that States identify the target population for their clinic programs and provide a rationale for choosing a specific group, supported

by data, where possible. For example, a State may choose to target all parents and care givers of children child safety seat age or booster seat age if data identify a statewide problem. Alternatively, a State may design its clinic program to focus on a lack of restraint use or high misuse rate among a specified minority, low-income or rural population, if data show a disproportionately high problem among that population as compared to data for the rest of the State.

We have determined, however, that the public information component of the State's child passenger protection education program should reach 70% of the State's total population. The public information campaign should be designed to raise awareness among the population as a whole of the importance of child restraint use.

We believe that these changes will give States flexibility in determining how to best structure their child passenger protection education programs and ensure that those groups most in need of instruction on the proper use of child restraint systems will receive this information.

In addition, the agency notes that this portion of the regulation also uses the term ''police.'' As stated previously, law enforcement officials perform their duties under a variety of titles, not limited to the title ''police.'' Accordingly, the agency has replaced the term ''police'' each time it appears in this portion of the regulation with the phrase ''law enforcement officials.''

7. Child Passenger Protection Law Criterion

The interim final rule provided that, to qualify under this criterion, a State must make unlawful the operation of a passenger motor vehicle whenever an individual who is less than 16 years of age is not properly secured in a child safety seat or other appropriate restraint system in any seating position of the vehicle. The agency noted in the interim final rule that some States currently allow some children under age 16 to ride unrestrained if they are in the rear seat of passenger vehicles or if they ride in certain excepted vehicles. The agency stated in the interim rule that it believes the intent of the legislation was to eliminate these gaps in coverage.

In its comments, Advocates agreed with the agency that the intent of this criterion was to close the gaps in current State laws and Advocates asserted that ''no exceptions should be permitted in order to qualify under this criterion.''

The agency has considered exceptions under this criterion very carefully, and only limited exceptions have been permitted, such as when children under the age of 16 ride on a school bus or when children under age 16 have a medical or physical condition that would prevent appropriate restraint and their condition is certified by a physician.

Accordingly, this portion of the interim regulation is adopted without change.

8. Limitation on Grant Amounts

The interim final rule provided that no grant may be made to a State unless the State certifies that it will maintain its aggregate expenditures from all other sources for its occupant protection program at or above the level of such expenditures in fiscal years 1996 and 1997. Pennsylvania questioned what the agency meant by the term ''all other sources'' and recommended that the agency clarify this provision.

The agency recognizes that, in fiscal years 1996 and 1997, some States expended unusually large sums of money on their occupant protection programs and that these sums were from special funding sources that are no longer available. In particular, many States experienced a transfer of funds in fiscal year 1995, under the Section 153 program, because they did not have in effect conforming motorcycle helmet or seat belt use legislation. Some of these States chose to use these funds to upgrade their occupant protection programs and, in many cases, the funds that had been transferred in fiscal year 1995 were expended in fiscal years 1996 and 1997.

The agency believes that the maintenance of effort requirement contained in the Section 405 program was intended to ensure that States maintain their ordinary spending on their occupant protection programs and that the funds they receive under the Section 405 program will supplement those expenditures and not replace them. The agency does not believe the requirement was intended to match special or unusual funding resources, such as the Section 153 transfer or other funds made available to States under Chapter 1 of Title 23 of the United States Code, some or all of which a State may choose to use also to supplement its ordinary spending in this area. The agency believes that the inclusion of these special funding sources in the maintenance of effort requirement would impose a hardship on the States and would not result in the most effective use of these resources.

Accordingly, the regulation has been modified to clarify that States must maintain their aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for their occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997.

9. Section 2003(b)

TEA 21 established a new incentive grant program under Section 2003(b) to promote child passenger protection education and training. Section 2003(b) provides federal funds for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use.

Wisconsin questioned why the agency's interim final rule was silent about the eligibility criteria that will be applied for States seeking grants under 2003(b).

The agency announced the availability of grants under Section 2003(b) in notices published in the **Federal Register** on September 20, 1999 (64 FR 50861) and on November 6, 2000 (65 FR 66582). The specific eligibility criteria for the grants were discussed in these notices.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform): This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures: The agency has examined the impact of this action and has determined that it is not significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures.

This action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 405 program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act.

Paperwork Reduction Act: This final rule contains information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127–0600, through February 28, 2002.

National Environmental Policy Act: The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act: The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, this incentive grant program is completely voluntary and States that choose to apply and qualify will receive incentive grant funds.

Executive Order 13132 (Federalism): This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 1, 1998, 63 FR 52592, adding a new Part 1345 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

1. The authority citation for Part 1345 continues to read as follows:

Authority: Pub. L. 105–178; 23 U.S.C. 405; delegation of authority at 49 CFR 1.50.

2. Section 1345.3 is amended by adding a new paragraph (f) to read as follows:

§ 1345.3 Definitions.

* * * * *

(f) *Targeted population* means a specific group of people chosen by a State to receive instruction on proper use of child restraint systems.

3. Section 1345.4 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 1345.4 General requirements.

(a) * * *

(1) * * *

(iv) It will maintain its aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for its occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or federal fiscal year 1996 and 1997 can be used);

* * * * *

4. Section 1345.5 is amended as follows:

a. A new paragraph (c)(4) is added;

b. Paragraph (d)(2) is amended by removing the word ''police'' and adding in its place ''law enforcement officials''; and paragraph (d)(5) is amended by removing the word ''police'' and adding in its place ''law enforcement'';

c. Paragraph (e)(1)(iv) is revised; paragraphs (e)(1)(ii) and (e)(2)(ii) are amended by removing the term ''police officers'' each time it appears and adding in its place ''law enforcement officials''; and paragraph (e)(2)(i) is amended by removing the word ''targeted'' and adding in its place ''State's''.

The addition and revision read as follows:

§ 1345.5 Requirements for a grant.

* * * * *

(c) * * *

(4) If a State has in effect a law that provides for the imposition of a fine of not less than $25.00 or one or more penalty points for a violation of the State's child passenger protection law, but provides that imposition of the fine or penalty points may be waived if the offender presents proof of the purchase of a child safety seat, the State shall be deemed to have in effect a law that provides for the imposition of a minimum fine or penalty points, as provided in paragraph (c)(1) of this section.

* * * * *

(e) * * *

(1) * * *

(iv) The States's public information program must reach at least 70% of the State's total population. The State's clinic program must reach at least 70% of a targeted population determined by the State and States must provide a rationale for choosing a specific group, supported by data, where possible.

* * * * *

Issued on: July 13, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–17993 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 84

RIN 1076–AE00

Encumbrances of Tribal Land—Contract Approvals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is issuing a Final Rule that states which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000. The regulation also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the regulation sets out mandatory conditions for the Secretary's approval.

EFFECTIVE DATE: September 24, 2001.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208–4582.

SUPPLEMENTARY INFORMATION:

I. Background

Under subsection (e) of the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (25 USC 81) (referred to commonly and herein as ''Section 81''), the Secretary is required to enact regulations establishing which types of agreements are not covered by Section 81. The preamble to the Proposed Rule, 65 FR 43874 (July 14, 2000), provides further background on the history of Section 81, including the contents of the 2000 amendments. The Final Rule was developed with attention to Secretarial Order 3215, ''Principles for the Discharge of the Secretary's Trust Responsibility,'' of April 28, 2000, which was converted to and made permanent in the Departmental Manual on October 31, 2000. See 303 DM 2.

In a significant departure from past practice, the BIA distributed the preliminary drafts of the proposed regulation to the National Congress of American Indians (NCAI) and to tribes through BIA regional directors, with a request for comments and recommendations. Several subsequent meetings were held with an NCAI policies and procedures working group to discuss the evolving draft regulation prior to publishing the proposed regulation. These meetings included the Assistant Secretary—Indian Affairs, the Deputy Commissioner of Indian Affairs, staff of the Trust Policies and Procedures (TPP) project, trust program managers, and trust program attorneys from the Solicitor's Office. Notably, tribal representatives from each BIA region and BIA managers participated in a three-day meeting in Mesa, Arizona, in April 2000, to discuss the draft regulation.

The regulation was published in the **Federal Register** on July 14, 2000, (65 FR 43874) with a 90-day public comment period to solicit comments from all interested parties. The BIA received 19 written comments from tribes, tribal representatives, and tribal organizations. During the comment period, the BIA discussed the regulation and received oral comments on the record at seven formal tribal consultation sessions with tribal leaders, individual Indians, and other interested parties: Aberdeen, SD (August 7–8, 2000); Oklahoma City, OK (August 10, 2000); Bloomington, MN (August 17, 2000); Albuquerque, NM (August 21 and 22, 2000 [two separate consultation meetings]; Billings, MT (August 24, 2000); and Reno, NV (August 28–29, 2000). Transcripts were made of these sessions in order to ensure that both oral and written comments were considered. Following the consultation meetings, several BIA regional and agency offices established informal local working groups with tribes to encourage discussion of the proposed regulations and submission of written comments. Throughout the comment period the BIA met on an informal basis to discuss the regulations with interested organizations, including the NCAI working group and the Inter-Tribal Monitoring Association. In sum, tribes and individual Indians have had an extraordinary opportunity to provide meaningful input on the proposed regulation through informal consultations on the early drafts, formal consultations, and the public comment period.

Comments were forwarded to a clearinghouse for compilation. The comments and compilation documents were carefully reviewed by the regulation drafting team, made up of BIA employees from the Central Office and trust program attorneys from the Solicitor's Office. Depending upon their merit, the Department accepted, accepted with revision, or rejected particular comments made on each part of the rule. Substantive comments and responses by the BIA are summarized below.

II. Response to Comments

As noted in the section-by-section analysis below, in direct response to comments the regulations have been clarified. No sections were deleted from the Proposed Rule to the Final Rule. One new section was added in the Final Rule at section 84.007 and the proposed section 84.007 was renumbered to section 84.008.

General Observations Regarding Changes From Proposed Rule

Overall, respondents recommended that we provide clarifications as to the types of agreements that do not require approval under Section 81. Therefore, in response to these comments, we revised definitions and language to make clearer the types of agreements that are not subject to Section 81. These revisions included corrections to the treatment of corporations under 25 USC 477 and contracts under 25 USC 450f or compacts under 25 USC 458aa. Several respondents recommended that we develop specific procedures for the submission and review of contracts covered under this Part. The BIA does not intend to prescribe any particular format for submission of requests for approval. Additionally, internal procedures for BIA review are not appropriate for rulemaking, but will be addressed in the Indian Affairs Manual.

We also received comments concerning Section 81's repeal of our authority to approve tribal attorney contracts, except for those entered into by the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma. As noted in the preamble to the Proposed Rule, BIA will now only approve attorney contracts if required to do so under a tribal constitution. The criteria, if any, for approval of such contracts will be those in the tribal constitution and any relevant Federal law. As is its policy, BIA will defer to the tribe's interpretation of its own law regarding such approvals. Consistent with the repeal of our statutory authority for approval of tribal attorney contracts, we are today repealing relevant portions of the regulations for such approvals at 25 CFR Part 89.

Section-by-Section Analysis

Section 84.001 What Is the Purpose of This Part?

Summary of Section. Section 84.001 states the purpose of the rule as being the implementation of the Indian Economic Development and Contract Encouragement Act of 2000, Pub. L. 106–179.

Comments. We received no comments on this section and no changes were made.

Section 84.002 What Terms Must I Know?

Summary of Section. Section 84.002 contains terms necessary for understanding the rule. The term ''encumber,'' which Congress did not define in the Act, refers, consistent with the Act's legislative history, to the possibility that a third party could gain exclusive or nearly exclusive proprietary control over tribal land. The ''third party'' in this definition refers to any party outside of the tribe who, under the terms of the contract or agreement, could gain exclusive or nearly exclusive proprietary control over tribal land, such as a lender or the holder of a secured interest in any improvements for a transaction involving a tribe and a potential lessee. We have defined ''Indian tribe'' as it is defined in the Act. The definition of ''tribal lands'' in the rule is the same as the definition of ''Indian lands'' in the

Act. We have used ''tribal lands'' to make it clear that the provisions of the Act and this rule do not apply to individually owned lands.

Comments. We received comments to revise the definitions of ''encumber '', ''Indian tribe'', and ''tribal lands''. We modified the definition of ''encumber'' to clarify that the terms of the contract or agreement will determine whether the contract or agreement encumber tribal lands. We did not accept the recommendations to change the definitions of ''Indian tribe'' and ''tribal lands''. These definitions are those provided by Congress. We did, however, modify the definition of ''Indian tribe'' to reflect the actual language of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e), as directed by Congress.

Section 84.003 What Types of Contracts and Agreements Require Secretarial Approval Under This Part?

Summary of Section. Section 84.003 indicates that, unless otherwise exempted, those contracts and agreements that encumber tribal lands for a period of seven or more years require Secretarial approval under this rule. As noted in the preamble to the Proposed Rule, the legislative history of Section 81 states, for example, that, if the default provision in a contract or agreement allows a third party (e.g., a lender) to operate the facility, that contract or agreement would ''encumber'' tribal land within the meaning of Section 81. If, however, the lender is only entitled to first right to the revenue from the facility, the contract or agreement would not ''encumber'' tribal land.

Comments. No comments were received for this section and no changes were made.

Section 84.004 Are There Types of Contracts and Agreements That Do Not Require Secretarial Approval Under This Part?

Summary of Section. Section 84.004 indicates that the following types of contracts or agreements are not subject to this rule:

• Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. Congress did not repeal any other requirement for Secretarial approval of encumbrances, nor did it state that the Act imposed an additional approval process, separate from existing statutory requirements. This exemption is also consistent with previous opinions of both the Department of the Interior and the Department of Justice, judicial decisions, and legislative history of the Indian Mineral Development Act, all of which consistently state that the requirements of Section 81 do not apply to leases, rights-of-way, and other documents that convey a present interest in tribal land. Note, however, that contracts and agreements that are similar to those approved under other federal law or regulation, but are not subject to that approval, such as a contract between a tribe and another party to least a tract of tribal land at a future date, may be subject to approval under this Part.

• Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477. Currently, this exemption only applies to certain leases by the Tulalip Tribes, the Navajo Nation, and tribes with a corporate charter authorized by 25 U.S.C. 477.

• Subleases and assignments of leases of tribal land that do not require approval by the Secretary under Part 162 of this title. This provision will ensure maximum consistency with BIA policies concerning different types of leases.

• Contracts or agreements that convey temporary use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members. Such assignments are internal tribal matters. We must approve any encumbrances of the assigned tribal land under this Part or another relevant regulation (e.g., 25 CFR Part 162).

• Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more. By definition, such contracts or agreements do not encumber the land under the Act. Such contracts or agreements may include contracts for personal services; construction contracts; contracts for services performed for tribes on tribal lands; and bonds, loans, security interests in personal property, or other financial arrangements that do not and could not involve interests in land.

• Contracts that are exempt from Secretarial approval under the terms of a corporate charter authorized under 25 U.S.C. 477.

• Tribal attorney contracts. However, as noted above, although the Act repealed the federal statutory requirements for approval of most attorney contracts, the BIA will still do so if required under a tribal constitution.

• Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.c. 458aa. This is to conform to the exemption of these contracts from approval by the Secretary under 25 U.S.C. 4501(c)(15)(A).

• Contracts or governments that are subject to approval by the National Indian Gaming Commission. The Act specifically exempts these contracts and agreements from its provisions, and the National Indian Gaming Commission will continue to review and approve contracts that provide for management of a tribal gaming activity.

• Contracts or agreements under the Federal Power Act (FPA) relating to the use of tribal lands that meet the definition of a ''reservation'' under the FPA, with certain conditions. The FPA already provides for review of such contracts or agreements by the Secretary.

Comments. Several comments recommended that the rule provide specific examples of contracts that do not encumber tribal land. These comments were partially accepted and clarifications were provided in this section concerning certain types of agreements such as hydropower projects and assignments of tribal land to tribal members.

The preamble to the Proposed Rule stated that Section 81 did not apply by its terms to any contracts or agreements entered into by corporations chartered under 25 U.S.C. 477. Commenters noted that there was no support in either Section 81 or its legislative history for such a statement. We agree, and have narrowed the exemption to only those contracts or agreements entered into by those corporations that do not otherwise require Secretarial approval. Conversely, commenters stated that the exemption in the Proposed Rule limited to attorney contracts entered into by Self-Governance tribes was too narrow, ignoring the broad exemption from Secretarial approval under 25 U.S.C. 4501(c)(15)(A) for any contract or agreement entered into under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa. We accepted the comments and broadened the exemption accordingly.

We rejected comments that recommended that the rule contain an exhaustive list of contracts or agreements that do not encumber tribal land. Such a list is not practicable because the determination of encumbrance is conducted on a case-by-case basis. For example, a restrictive covenant or conservation easement may encumber tribal land within the meaning of Section 81, while an agreement that does not restrict all economic use of tribal land may not. An agreement whereby a tribe agrees not to interfere with the relationship between

a tribal entity and a lender, including an agreement not to request cancellation of the lease, may encumber tribal land, depending on the contents of the agreement. Similarly, a right of entry to recover improvements or fixtures may encumber tribal land, whereas a right of entry to recover personal property may not.

Section 84.005 Will the Secretary Approve Contracts or Agreements Even Where Such Approval Is Not Required Under This Part?

Summary of Section. Section 84.005 makes it clear that the Secretary will return to the submitting tribes those contracts and agreements that do not require his or her approval. Therefore, we will no longer issue ''accommodation approvals.''

Comments. We received several comments recommending that the regulation specify a specific time frame when the Secretary will return contracts and agreements with a statement explaining why Secretarial approval is not required. We accepted these comments and added a time frame in this section that states that within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. We also received comments requesting provisions for appeal of determinations under this section. These comments were not accepted because Part 2 of this Title applies to all decisions made by the Secretary, including those under this section.

Section 84.006 Under What Circumstances Will the Secretary Disapprove a Contract or Agreement That Requires Secretarial Approval Under This Part?

Summary of Section. Section 84.006 establishes the criteria for disapproval of a contract or agreement under this rule. Specifically, the Secretary must disapprove those contracts or agreements that would violate federal law or those that do not contain provision(s) regarding the exercise of tribal sovereign immunity. As noted in the preamble to the Proposed Rule, consistent with the legislative history of the Act, these are the only criteria for Secretarial disapproval under this rule.

Comments. Many respondents provided comments that recommended that the Secretary consult with tribes prior to disapproving a contract or agreement so that tribes may have an opportunity to correct elements that may lead to disapproval. We accepted these comments and added subsection (b) to this section to identify that the Secretary will consult with tribes for this purpose. We also received comments asking whether the Secretary will require particular kinds of remedies for a contract or agreement. Consistent with the purposes of Section 81, the Secretary will only identify whether remedies are addressed but will not disapprove a contract or agreement based on the types of remedies used.

Section 84.007 What Is The Status of a Contract or Agreement That Requires Secretarial Approval Under This Part But Has Not Yet Been Approved?

Summary of Section. This section provides that a contract or agreement that requires Secretarial approval under this Part is not valid until the Secretary approves it.

Comments. This section was added to the Final Rule in response to several comments. We also received comments recommending that we determine in the rule whether contracts can be approved retroactively by the Secretary. Decisions as to whether a particular contract or agreement may be approved retroactively will be made on a case-by-case basis. Such retroactive effect may be approved if the Secretary is satisfied that the consideration for the contract or agreement was adequate; that the tribe received the full consideration bargained for; that there is no evidence of fraud, overreaching, or other illegality in the procurement of the contract or agreement; and that the conditions of section 84.006 of this Part are met. *Wishkeno* v. *Deputy Assistant Secretary—Indian Affairs (Operations),* 11 IBIA 21 (1982).

Section 84.008 What Is the Effect of the Secretary's Disapproval of a Contract or Agreement That Requires Secretarial Approval Under This Part?

Summary of Section. Section 84.008 states, consistent with section 2(b) of the Act, that the effect of disapproval of a contract or agreement under this Part (as opposed to return of a contract or agreement under section 84.005 of this rule) is that the contract or agreement is invalid.

Comments. There were no comments on this section. The section was renumbered from § 84.007 in the Proposed Rule to this section of the Final Rule.

III. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or 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 rule is not a ''significant regulatory action'' from an economic or policy standpoint. This rule is pursuant to a statutory mandate and is consistent with the Department's policy of encouraging tribal self-determination and economic development. The rule reduces the number of contracts the Department has to review each year. Prior to the amendments enacted under Pub. L. 106–179, tribes had to submit certain contracts for approval by the Secretary of the Interior for which Secretarial approval has now (through enactment of Pub. L. 106–179) been deemed unnecessary. Those tribes having contracts or agreements covered under the new law, however, must include a statement regarding their sovereign immunity or remedies. This is an intergovernmental mandate; however, it would not affect the rights of either party under such contracts and agreements, but would only require that these rights be explicitly stated. The cost burden on the tribes for including this provision would be minimal. Otherwise, the rule has no direct or indirect impact on any other agency, does not materially alter the budgetary impact of financial programs, or raise novel legal or policy issues.

B. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements:

(1) Eliminate drafting errors and ambiguity;

(2) Write regulations to minimize litigation; and

(3) Provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation:

(1) Clearly specifies the preemptive effect, if any;

(2) Clearly specifies any effect on existing Federal law or regulation;

(3) Provides a clear legal standard for affected conduct while promoting simplification and burden reduction;

(4) Specifies the retroactive effect, if any;

(5) Adequately defines key terms; and

(6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

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

D. Review Under the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more. This rule will not result in a major increase in costs or prices. In fact, it is estimated that the Department will save time and resources through the rule because the number of contracts submitted for Secretarial approval will be reduced. Therefore, no increases in costs for administration will be realized and no prices would be impacted through the streamlining of the contract approval process within the Department and the BIA. The effect of the rule is to encourage and foster tribal contracting and, consequently, strengthen tribal self-determination and economic development. This rule will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the rule will be realized by tribal governments in the economy of administration accorded contract negotiation between tribes and third parties. Unless the contracts contemplate an encumbrance of Indian lands or by their terms could otherwise lead to the loss of tribal proprietary control over such lands, the Department would not require such contracts and agreements to be submitted to the BIA for approval. The Department anticipates, therefore, that the impacts to small business or enterprises and the tribes themselves will be positive and, indeed, allow for greater flexibility in contracting for certain services on Indian lands.

E. Review Under the Paperwork Reduction Act

No information or record keeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Review Under the National Environmental Policy Act of 1969

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this rule (i.e., approval or disapproval of contracts or agreements that could encumber Tribal lands for a period of seven years or more) will be subject at the time of the action itself to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 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 Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule will not result in the expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department does take notice, however, that the rule (in response to Pub. L. 106–179) requires that a tribe entering into a covered contract include a specific statement regarding its sovereign immunity or remedies. This is an additional enforceable duty imposed on the tribes, and so would constitute an intergovernmental mandate under the Unfunded Mandates Reform Act. However, the cost of this mandate would be minimal.

I. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this rule unless a tribe voluntarily enters into a contract or agreement that could encumber tribal land for seven years or more. As noted above, tribes were asked for comments prior to publication of this Final Rule.

J. Review Under Executive Order 13211—Energy

In accordance with the President's Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355), we have determined that this rulemaking 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. This rulemaking simply clarifies those types of contracts or agreements encumbering tribal land that are not subject to the approval of the Secretary

of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000. This is, therefore, an administrative clarification and would not otherwise have any impact on the Nation's energy resources.

List of Subjects in 25 CFR Part 84

Administrative practice and procedure, Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends 25 CFR chapter I by adding Part 84 to read as follows:

PART 84—ENCUMBRANCES OF TRIBAL LAND—CONTRACT APPROVALS

Sec.

84.001 What is the purpose of this part?
84.002 What terms must I know?
84.003 What types of contracts and agreements require Secretarial approval under this part?
84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?
84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?
84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?
84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?
84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

Authority: 25 U.S.C. 81, Pub. L. 106–179.

§ 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

§ 84.002 What terms must I know?

The *Act* means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

Encumber means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

Indian tribe, as defined by the Act, means any Indian tribe, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Interior or his or her designated representative.

Tribal lands means those lands held by the United States in trust for an Indian tribe or those lands owned by an Indian tribe subject to federal restrictions against alienation, as referred to Public Law 106–179 as ''Indian lands.''

§ 84.003 What types of contracts and agreements require Secretarial approval under this part?

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber trial lands for a period of seven or more years require Secretarial approval under this part.

§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

Yes, the following types of contracts or agreements do not require Secretarial approval under this part:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152 (patents in fee, certificates or competency); 162 (non-mineral leases, leasehold mortgages); 163 (timber contracts); 166 (grazing permits); 169 (rights-of-way); 200 (coal leases); 211 (mineral leases); 216 (surface mining permits and leases); and 225 (mineral development agreements);

(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477;

(c) Sublease and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title;

(d) Contracts or agreements that convey to tribal members any rights for temporary use of tribal lands, assigned by Indian tribes in accordance with tribal laws or custom;

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are exempt from Secretarial approval under the terms of a corporate charter authorized by 25 U.S.C. 477;

(g) Tribal attorney contracts, including those for the Five Civilized Tribes that are subject to our approval under 25 U.S.C. 82a;

(h) Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa.

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Commission's regulations; or

(j) Contracts or agreements relating to the use of tribal lands for hydropower projects where the tribal lands meet the definition of a ''reservation'' under the Federal Power Act (FPA), provided that:

(1) Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) FERC license or exemption includes the Secretary's conditions for protection and utilization of the reservation under section 4(e) and payment of annual use charges to the tribe under section 10(e) of the FPA (16 U.S.C. 803(e)).

§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

No, the Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. Within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

§ 84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

(a) The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

(1) Violates federal law; or

(2) Does not contain at least one of the following provisions that:

(i) Provides for remedies in the event the contract or agreement is breached;

(ii) References a tribal code, ordinance or ruling of a court of competent

jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

(iii) Includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

(b) The Secretary will consult with the Indian tribe as soon as practicable before disapproving a contract or agreement regarding the elements of the contract or agreement that may lead to disapproval.

§ 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?

A contract or agreement that requires Secretarial approval under this part is not valid until the Secretary approves it.

§ 84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

If the Secretary disapproves a contract or agreement that requires Secretarial approval under this part, the contract or agreement is invalid as a matter of law.

Dated: July 9, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–18475 Filed 7–25–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 89

RIN 1076–AE18

Attorney Contracts With Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final Rule.

SUMMARY: We are issuing a final rule removing the text of certain sections and thereafter reserving those sections of the regulations pertaining to approval by the Secretary of the Interior of tribal attorney contracts, except for those entered into by the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma. Congress repealed our statutory authority for such approvals of tribal attorney contracts as part of the Indian Tribal Economic Development and Contract Encouragement Act of 2000.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208–4582.

SUPPLEMENTARY INFORMATION:

Background

In 1871, Congress enacted section 2103 of the Revised Statutes, codified at 25 U.S.C. 81 (Section 81). It placed several restrictions, including a requirement for approval by the Secretary of the Interior, on contracts between any person and any Indian tribe or individual Indians for

> the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States.

Section 81 reflected Congressional concern that Indian tribes and individual Indians were incapable of protecting themselves from fraud in their financial affairs. To that end, it also required that the Secretary approve any contracts for legal services between an Indian tribe and an attorney. Congress later confirmed the requirement for Secretarial approval of tribal attorney contracts with the passage of section 16 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. 476 (Section 476 does not apply to the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma. The Secretary has separate authority for approval of attorney contracts for the Five Civilized Tribes under section 1 of Pub. L. 82–440, 25 U.S.C. 82a.)

In March 2000, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), Pub. L. 106–179. The Act generally replaces Section 81 with a new provision that does not include the requirement to approve tribal attorney contracts. (We are publishing final regulations today at 25 CFR part 84 implementing the Act.) Subsection (f) of the Act repeals the portion of 25 U.S.C. 476 concerning approval of tribal attorney contracts. The Act does not address the separate requirement that attorney contracts by the Five Civilized Tribes must be approved by the Secretary.

Because the Act repealed much of our statutory authority for approval of tribal attorney contracts, we are today repealing the corresponding regulations in 25 CFR part 89. We are not repealing the regulations concerning approval of tribal attorney contracts for the Five Civilized Tribes, since Congress left our authority for those approvals in place. We will, however, issue a separate proposed rule, in consultation with the Five Civilized Tribes, to revise these regulations, especially 25 CFR 89.30, in light of the amendments to section 81. We are also not repealing our regulations in part 89 for the payment of tribal attorneys fees.

Consistent with the long-standing principle that the federal trust obligation may not be unilaterally terminated, the Act does not alter those tribal constitutions that require federal approvals for specific tribal actions, such as attorney contracts. Thus, the Secretary must still approve or disapprove attorney contracts if a tribal constitution so requires. The criteria, if any, for approval of such contracts will be those in the tribal constitution and any relevant Federal law. As is its policy, BIA will defer to the tribe's interpretation of its own law regarding such approvals.

Notice and Public Procedure on This Final Rule

As noted above, this final rule is effective on the publication of this notice. Under 5 U.S.C. 553(b)(3)(B), notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this rule effective immediately under 5 U.S.C. 553(d)(3). Notice and public procedure would be impracticable and unnecessary because this rule is merely repealing regulations for which we now have no statutory authority.

Waiting for notice and comment on this final rule would be contrary to the public interest. Some of the comments on the proposed part 84 regulations expressed confusion as to the status of the part 89 regulations that we are repealing today. By making this a final rule effective immediately, we end such confusion.

Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create 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 or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is not a ''significant regulatory action'' from an economic or policy standpoint. This final rule is pursuant to a statutory mandate and is consistent with the Department's policy of encouraging tribal self-determination and economic development. The final rule reduces the number of contracts the Department has to review each year. Prior to the amendments enacted under Pub. L. 106–179, tribes had to submit certain contracts for approval by the Secretary of the Interior for which Secretarial approval has now (through enactment of Pub. L. 106–179) been deemed unnecessary. The final rule has no direct or indirect impact on any other agency, does not materially alter the budgetary impact of financial programs, or raise novel legal or policy issues.

B. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

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

D. Review Under the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

This final rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This finals rule will not result in an annual effect on the economy of $100 million or more. This final rule will not result in a major increase in costs or prices. In fact, it is estimated that the Department will save time and resources through the final rule because the number of contracts submitted for Secretarial approval will be reduced. Therefore, no increases in costs for administration will be realized and no prices would be impacted through the streamlining of the contract approval process within the Department and the BIA. The effect of the final rule is to encourage and foster tribal contracting and, consequently, strengthen tribal self-determination and economic development. This final rule will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Review Under the Paperwork Reduction Act

No information or recordkeeping requirements are imposed by this final rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 13132 Federalism

This final 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.

G. Review Under the National Environmental Policy Act of 1969

This final rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., because it is of an administrative, legal, and procedural nature. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 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 Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This final rule will not result in the expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

I. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects.

J. Review Under Executive Order 13211—Energy

In accordance with the President's Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355), we have determined that this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This is merely an administrative action (the removal of text of certain sections of regulations concerning attorney contracts) and does

not otherwise qualify as significant regulatory action under Executive Order 12866 or any successor order.

List of Subjects in 25 CFR Part 89

Indians—tribal government.

Under 25 U.S.C. 81 and as discussed in the preamble, amend Title 25, chapter I, of the Code of Federal Regulations as follows:

PART 89—ATTORNEY CONTRACTS WITH INDIAN TRIBES

1. The authority citation for part 89 is revised to read as follows:

Authority: 5 U.S.C. 301; secs. 89.30 to 89.35 also issued under 25 U.S.C. 2, 9, and 82a; secs. 89.40 to 89.43 also issued under 25 U.S.C. 13, 450 *et seq.*

2. Sections 89.1 through 89.26 of part 89 are removed and reserved.

Dated: July 9, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–18476 Filed 7–25–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 159

[CGD17–01–003]

RIN 2115–AG12

Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is implementing regulations regarding sewage and graywater discharges from certain cruise vessels transiting applicable waters of Alaska. Operators of cruise vessels carrying 500 or more passengers and transiting applicable waters of Alaska are restricted in where they may discharge effluents and will be required to perform testing of sewage and graywater discharges and maintain records of such discharges. The Coast Guard will inspect, monitor, and oversee this process to ensure compliance with applicable water quality laws and regulations.

DATES: This rule shall be effective on July 26, 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 CGD17–01–003 and are available for inspection or copying at room 751 of the Federal Building in Juneau, AK between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Spencer Wood, Seventeenth District (moc), 907–463–2809.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 25, 2001, we published a notice of proposed rulemaking (NPRM) entitled Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations in the **Federal Register** (66 FR 20770). We received 7 letters commenting on the proposed rule. 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**. The regulations enacted by this final rule are the product of ''Title XIV—Certain Alaskan Cruise Ship Operations'' of the Miscellaneous Appropriations Bill (H.R. 5666) passed by Congress on December 21, 2000 in the Consolidated Appropriations Act of 2001 (Pub. L. 106–554) (''Title XIV''). Discussed at greater length below, Title XIV gives the Coast Guard new enforcement tools essential to curb current sewage and graywater effluent discharges from large cruise vessels in Alaskan waters. There is good cause to make this final rule effective upon publishing because the Coast Guard needs the regulations to enforce the standards set in Title XIV during the summer 2001 cruise season. The lack of a final rule has inhibited enforcement of the new legislation during this season. The Coast Guard has initiated law enforcement action against two vessels that arrived during the first week of the season for violating the Title XIV standards. These and other potential violators of the legislation and these regulations, in particular the self-reporting and record keeping requirements, are currently escaping complete enforcement action. The inability to wholly enforce Congress' mandate in Title XIV will continue until the rule is made effective. Further, the majority (6 of 7) of the public comments received stated that the Coast Guard should immediately begin enforcement of these proposed regulations.

Background and Purpose

Congress passed Title XIV in response to public concern with environmental impacts of cruise vessels on Alaska waters. This legislation was drafted in the wake of past incidents of illegal wastewater discharges, the discovery of high levels of fecal coliform in legal discharges of treated sewage and graywater, the projected growth of the industry, and the trend within the industry towards larger vessels that carry over 5000 people.

In December of 1999, a task force comprised of representatives from the federal government, State government, the cruise industry, and environmental groups was established to develop voluntary procedures for sampling and analyzing wastes generated by cruise vessels while operating in Alaska's waters during the 2000 cruise vessel season.

During the summer 2000 cruise season, the relevant segment of the cruise industry voluntarily agreed not to discharge treated sewage or graywater while in port, not to discharge garbage or untreated sewage in Southeast Alaska's ''Donut Holes'' (bodies of water greater than three miles from any shoreline yet within Alaska's inside passage), and not to discharge treated sewage or graywater, unless more than 10 miles from port and proceeding at a speed of not less than 6 knots.

Additionally, a voluntary sampling and testing protocol and Quality Assurance/Quality Control Plan (QA/QPC) for treated sewage and graywater were developed. The protocol and QA/QPC were applied to 21 cruise vessels calling on Alaska ports during the 2000 season.

The test results revealed that the majority of the vessels' discharges, both treated sewage and graywater, exceeded marine sanitation device (MSD) design standards for water quality of 200 fecal coliform per 100 milliliters and 150 milligrams per liter total suspended solids (TSS). The high levels of fecal coliform and TSS found in treated sewage indicate that the MSDs used by cruise vessels may not be operating properly or functioning as designed. The Coast Guard boarded 15 vessels as a result of high fecal coliform and TSS levels. Five vessels were found to have evidence of improperly functioning MSDs. The source of the high fecal coliform and TSS found in graywater has yet to be positively determined.

Concurrent with this voluntary sampling process, Congress was drafting legislation that addressed sewage and graywater discharges in Alaska's waters and sought to close the ''Donut Holes'' located in Southeast Alaska's Inside Passage to untreated sewage discharge. This legislation was enacted into law on December 21, 2000, as part of the Consolidated Appropriations Act of 2001 in the form of Title XIV.

The summer 2001 cruise season began on May 1st. As in the past two seasons, the cruise industry has consented to voluntarily participate in a sampling protocol. The regulatory requirements set forth in the NPRM are being observed voluntarily. Despite notice of the new standards and voluntary industry participation in a sampling program based on those standards, the Coast Guard has initiated law enforcement action against two vessels that arrived during the first week of the season for violating the Title XIV standards. However, this law enforcement action has been limited in the absence of the regulations stated in this final rule.

These regulations are in response to Title XIV statutory mandate to draft implementing regulations. Section 1406 of Title XIV directs the Secretary to incorporate into the commercial vessel examination program an inspection regime sufficient to verify that operators of cruise vessels carrying 500 or more passengers and visiting ports in the State of Alaska or operating in the applicable waters of Alaska are in full compliance with the environmental record keeping and equipment requirements of Title XIV, the Federal Water Pollution Control Act, as amended, and any regulations issued there under, other applicable Federal laws and regulations, and all applicable international treaty requirements. The applicable waters of Alaska are defined as the waters of the Alexander Archipelago, the navigable waters of the United States within the State of Alaska, and the Kachemak Bay National Estuarine Research Reserve.

Discussion of Comments and Changes

As noted above, the Coast Guard received 7 comments on the NPRM. These comments were received from private individuals and representatives of private environmental organizations. No comments were received from the cruise ship industry. The comments raised both general issues about Title XIV and the proposed regulations and specific issues about the language of the proposed regulations.

The general issues indicated three things. First, commenters uniformly supported the new legislation and recommended immediate enforcement of the statute and the proposed regulations. Second, the majority of the letters urged the Coast Guard to seek increased funding to ensure rigorous implementation and enforcement of the regulations. Third, the letters recommended the Coast Guard use as many unannounced inspections of cruise vessels as necessary to ensure pollution control equipment is functioning properly.

In raising these general issues, commenters did not recommend specific changes to the proposed regulations, therefore none have been made. The first general comment recommending immediate enforcement of the proposed regulation does, however, support the Coast Guard's determination that good cause exists for the final rule to be made effective upon publishing.

One of the 7 comments stated that Title XIV and the proposed regulations would only create a large environmental problem and that all cruise ship effluent discharges should be directed to shoreside processing plants. This comment sought action that is beyond the scope of Title XIV and this rulemaking. As such, no changes were made in response to this comment.

Four commenters recommended immediate designation of ''no-discharge zones'' under § 159.309(a)(2). This section, along with section 1404 of Title XIV from which § 159.309(a)(2) is derived, does not provide for establishment of no-discharge zones. Instead, they provide for establishment of areas less than a mile from shore, by the Coast Guard in consultation with the State of Alaska, for discharge by cruise ships. The language in § 159.309(a)(2) is directly quoted from the law. Establishment of no-discharge zones is provided for in Title XIV section 1410, however, it gives authority to State of Alaska to petition the Administrator of the Environmental Protection Agency to establish no-discharge zones, not the Coast Guard. Therefore, establishment of no-discharge zones is not addressed in this rulemaking.

Four commenters criticized §§ 159.309(b)(5) and (6) for being too general and recommendations were made that a more specific sampling regime be used. The Coast Guard disagrees with these comments and has made no changes to these sections. The language in §§ 159.309(b)(5) and (6) allows for current and future advances in effluent discharge technology and gives the Captain of the Port (COTP) discretion to tailor testing for individual vessels. Similarly, there were four recommendations that the Coast Guard develop a more specific Quality Assurance /Quality Control Plan (QA/QCP) than that prescribed in § 159.317(b). This section also has not been changed to ensure COTP flexibility in the face of varying vessel effluent discharge systems. The Coast Guard believes these concerns are more appropriately addressed during review of the QA/QCP and VSSP.

Four commenters recommended that the language of § 159.313(b) be expanded to include inspection of Marine Sanitation Devices, holding tanks, and other equipment. This equipment is already being examined by the Coast Guard and the existing language ''general examination of the vessel'' includes this specific equipment obviating the need for more specific direction to Coast Guard inspectors.

Four commenters recommended expansion of the Graywater Discharge Record Book minimum requirements to specify whether the effluent was treated or untreated, and, if treated, in what manner or with what specific technology or equipment. The Coast Guard agrees with this suggestion and has modified § 159.315 to reflect this change.

One commenter recommended that the requirement under § 159.317(a)(1) be modified to ensure QA/QCPs be uniformly applicable to all cruise ships. The Coast Guard agrees and the language of this section has been modified. In addition, the requirement for submission of a Vessel Specific Sampling Plan has been moved from this section to § 159.317(a)(3). The Coast Guard believes this change is necessary after observation of the startup of the 2001 cruise season. This change is intended to allow a third party contractor, hired to conduct the sampling, to develop a VSSP adequate for operations in the applicable waters of Alaska. Therefore, submission of the VSSP should occur within 30 days of each vessel's initial entry into the applicable waters of Alaska.

Four commenters recommended the self certification requirement under § 159.317(a)(2) be based on current samples from treated sewage and graywater effluents. The Coast Guard agrees and the language of this section has been modified to ensure that samples are coincident with the cruise vessel's window of time for annual self certification.

One commenter recommended a requirement be included in § 159.315 that copies of the Sewage and Graywater Discharge Record Book be submitted to the Coast Guard and Alaska Department of Environmental Conservation at regular intervals. The Coast Guard disagrees. The current language provides for maintenance of the Sewage and Graywater Discharge Record Book on board the vessel and that it be readily available for inspection. In addition, language under § 159.313(b) provides that a copy of any entry in the Sewage and Graywater Discharge Record Book may be made and the Master of the vessel may be required to certify that the

copy is a true copy of the original entry. The Sewage and Graywater Discharge Record Book is an enforcement tool to ensure compliance with environmental laws and regulations. The Coast Guard has determined that maintenance of this record on board the vessel, with full access by the Coast Guard, is adequate to ensure compliance as mandated by Title XIV.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

A Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP) is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from cruise vessels. During the summer 2000 voluntary cruise vessel sampling program a single QA/QCP, acceptable to the Coast Guard, was used by all 21 cruise vessels. A VSSP was then developed for each vessel. It is anticipated the same, or similar depending on the laboratory used, QA/QCP and VSSP will be used for subsequent summer cruise vessel seasons negating the need to develop new ones. The Coast Guard is not able to estimate the burden that may be associated with individual cruise vessel revisions to the QA/QCP and VSSP, if any.

The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 cruise vessels is expected to be $460. This estimate is for the cost of purchasing a record book and maintaining it onboard each vessel. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

During the summer 2000 cruise vessel voluntary sampling program, the cruise industry operating in Alaska spent an estimated $65,000 on sampling of cruise vessels while underway. An additional estimated $150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling program included two separate sampling events on 21 cruise vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase from 21 to 23. Therefore, the annual burden for sampling and analysis under these regulations is estimated to be $215,000. When divided by the number of participants, the annual cost to each individual vessel is estimated to be $9,348. The estimated cost to each cruise vessel line is as follows:

Cruise line	Vessels	Cost
Princess Cruises	6	$56,088
Holland American	6	56,088
Celebrity	2	18,696
Norwegian	2	18,696
Royal Caribbean	2	18,696
Carnival	1	9,348
Japan	1	9,348
World Explorer	1	9,348
Crystal Cruises	1	9,348
Radisson Seven Seas	1	9,348

The cost is based on two sampling events on each cruise vessel. One sample event would be required within 30 days of entering Alaska waters. The second sample event, although discretionary by the Coast Guard, will be taken from vessels that visit Alaskan waters at least four times a year. Additional samples and analysis may be required, along with the associated cost increase, should the initial sample results indicate noncompliance.

The Coast Guard is not able to estimate the costs that might be incurred if a cruise vessel cannot certify that their discharges meet the applicable standards, and does not have the capacity to hold all of its discharges while transiting the applicable waters of Alaska. In that scenario, it is believed that the cruise vessel would need to alter its cruise itinerary in order to leave the applicable Alaskan waters and enter the high seas, thus enabling the vessel to discharge. We asked for comments to help us estimate this cost, but none were received.

Small Entities

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

Because the population of affected cruise vessels are owned by entities that do not qualify as small entities, 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.

Collection of Information

This rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), ''collection of information'' includes reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating in Alaskan Waters.

Summary of the Collection of Information: The following information will be required to be collected by these regulations:

Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP).

Sewage and Graywater Discharge Record Book.

Sewage and graywater sampling test results.

Need for Information: Compliance and enforcement of ''Certain Alaskan Cruise Ship Operations'' (Pub. L. 106–554).

Proposed use of Information: Regulatory oversight and compliance assurance.

Description of the Respondents: Master or other person having charge of each cruise vessel authorized to carry 500 or more passengers while operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

Number of Respondents: 23.

Frequency of Response: Periodically while operating in the waters described above.

Burden of Response: There are three separate record keeping requirements involved in this regulation. Each is addressed separately, and the estimated total burden follows:

1. Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP) development costs.

A QA/QCP with VSSP is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from cruise vessels. During the summer 2000 voluntary cruise vessel sampling program, a single QA/QCP acceptable to the Coast Guard, was used by all 21 cruise vessels. A VSSP was then developed for each vessel and sampling was conducted in compliance with these documents. It is anticipated the same, or similar, QA/QCP and VSSP will be used for subsequent summer cruise vessel seasons negating the need to develop a new QA/QCP or VSSP. The Coast Guard is not able to estimate the burden that may be associated with individual cruise vessel revisions to the QA/QCP or VSSP, if any.

2. Sewage and Graywater Discharge Record Book costs. The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 cruise vessels is expected to be $460. This estimate is for the cost of purchasing a record book and maintaining it onboard each vessel. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

3. Sample collection and analysis costs.

a. During the summer 2000 cruise vessel voluntary sampling program, the cruise industry operating in Alaska spent an estimated $65,000 on sampling of cruise vessels while underway. An additional estimated $150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling program included two separate sampling events on 21 cruise vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase from 21 to 23. Therefore, the annual cost for sampling and analysis under these regulations is estimated to be $215,000. When divided by the number of participants, the annual cost to each individual vessel is estimated to be $9,348.

Estimated Total Annual Burden: The estimated total annual burden is $215,460.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard submitted a copy of this rule to OMB for its review of the collection of information.

The Coast Guard solicited public comment on the collection of information to: (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the 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 on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

OMB has approved our collection of information and assigned to it OMB control number 2115–0647. This approval expires on December 31, 2001. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

Under Executive Order 13132, section 3(b), the Coast Guard finds that a program monitoring effluent discharge from cruise ships transiting certain Alaskan waters is in the national interest, as evidenced by Congress in enacting ''Title XIV—Certain Alaskan Cruise Ship Operations'' as part of the Consolidated Appropriations Act of 2001 (Pub. L. 106–554). In that legislation, Congress empowered the Coast Guard to monitor wastewater discharges from cruise ships transiting certain Alaskan waters.

The sampling, testing and log-keeping program outlined in this regulation was taken from a similar program that was run on a voluntary basis during the summer of 2000. That program was one of the results of the Alaska Cruise Ship Initiative, which grew out of a working group composed of representatives from the cruise industry, the public, environmental groups, and state and federal government. The Coast Guard was one of the federal government representatives on that group. The working group was begun by the Commissioner of the Alaska Department of Environmental Conservation (ADEC) in December of 1999.

At the conclusion of the 2000 Alaskan cruise ship season, data from the voluntary wastewater sampling and testing program showed that none of the tested vessels were in full compliance with all federal performance standards for the discharge of treated sewage. This data, as well as data showing high levels of pollutants in graywater, spurred the legislation cited above. It also spurred a meeting between the Alaska governor, ADEC, the Coast Guard, and members of the cruise ship industry in November of 2000. At this meeting, the governor expressed his approval of the then-proposed Title XIV, and the greater authority it granted to the Coast Guard to protect Alaskan waters from pollutants.

This established cooperation between the Coast Guard and the State of Alaska, and the State's support of the legislation and voluntary testing program on which the regulation is based shows how the Coast Guard has consulted with State officials in accordance with Executive Order 13132, Section 3(b). The Coast Guard will continue to consult the State by sharing the results of sample tests with the State, as well as requiring that discharge logbooks be kept in a format readable by the Alaskan Department of Environmental Conservation.

Section 6(c)(2) of Executive Order 13132, requires, that if the agency promulgating the regulations intends that they have preemptive effect, it state that intention and the rationale on which it is based. Accordingly, the following statement is provided:

Section 1411 (b) Pub. L. 106–554 specifies that, ''[n]othing in this Title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof—(1) to impose additional liability or additional requirements; * * *.'' This language, was drafted so as to be identical to the savings clause in Section 1018 of the Oil Pollution Act of 1990, which was recently interpreted by the Supreme Court in the case of *U.S.* v. *Locke,* 120 S.Ct. 1135 (Mar. 6, 2000). The Court held that a state could regulate regarding actual discharges, but could

not regulate in the areas of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, or manning of vessels. In the Department of Transportation's letter transmitting Title XIV of Pub. L. 106–554 to Congress, we explained that conference report language on Title XIV should explain that preemption for this bill would work in the same manner as in OPA 90. We also discussed this position with the Alaska Attorney General's Office.

Accordingly, these rules are construed in the same manner as OPA 90, as described in the Department of Transportation's views letter referred to above. Thus, any of these regulations that have the effect of regulating a cruise vessel's design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, manning and casualty reporting have preemptive effect under existing U.S. laws and treaties to which the United States is a party. However, state legislation regulation actual discharges only is not preempted by these regulations.

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 discretionary regulatory actions. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create 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

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This proposed regulation would require operators of cruise vessels carrying 500 or more passengers in Alaskan waters to document treated sewage and graywater discharges to ensure that they comply with effluent discharge standards. The content of effluent discharges reflects compliant equipment operations. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

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 159

Reporting and recordkeeping requirements, sewage disposal, vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 159 as follows:

PART 159—MARINE SANITATION DEVICES

1. The authority citation for part 159 is revised to read as follows:

Authority: 33 U.S.C. 1322(b)(1); 49 CFR 1.45(b) and 1.46(l) and (m). Subpart E also issued under authority of sec. 1(a)(4), Pub. L. 106–554, 114 Stat. 2763; 49 CFR 1.46(ttt).

2. Subpart E is added to part 159 to read as follows:

Subpart E—Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

Sec.

159.301 Purpose.
159.303 Applicability.
159.305 Definitions.
159.307 Untreated sewage.
159.309 Limitations on discharge of treated sewage or graywater.
159.311 Safety exception.
159.313 Inspection for compliance and enforcement.
159.315 Sewage and graywater discharge record book.
159.317 Sampling and reporting.
159.319 Fecal coliform and total suspended solids standards.
159.321 Enforcement.

Subpart E—Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

§ 159.301 Purpose.

The purpose of this subpart is to implement ''Title XIV—Certain Alaskan Cruise Ship Operations'' contained in section 1(a)(4) of Pub. L. 106–554, enacted on December 21, 2000, by prescribing regulations governing the discharges of sewage and graywater from cruise vessels, require sampling and testing of sewage and graywater discharges, and establish reporting and record keeping requirements.

§ 159.303 Applicability.

This subpart applies to each cruise vessel authorized to carry 500 or more passengers operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

§ 159.305 Definitions.

In this subpart:

Administrator—means the Administrator of the United States Environmental Protection Agency.

Applicable Waters of Alaska—means the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

Captain of the Port—means the Captain of the Port as defined in Subpart 3.85 of this chapter.

Conventional Pollutants—means the list of pollutants listed in 40 CFR 401.16.

Cruise Vessel—means a passenger vessel as defined in section 2101(22) of Title 46, United States Code. The term does not include a vessel of the United States operated by the federal

government or a vessel owned and operated by the government of a State.

Discharge—means a release, however caused, from a cruise vessel, and includes, any escape, disposal, spilling, leaking, pumping, emitting or emptying.

Environmental Compliance Records—includes the Sewage and Graywater Discharge Record Book, all discharge reports, all discharge sampling test results, as well as any other records that must be kept under this subpart.

Graywater—means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

Navigable Waters—has the same meaning as in section 502 of the Federal Water Pollution Control Act, as amended.

Person—means an individual, corporation, partnership, limited liability company, association, state, municipality, commission or political subdivision of a state, or any federally recognized Indian tribal government.

Priority Pollutant—means the list of toxic pollutants listed in 40 CFR 401.15.

Sewage—means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

Treated Sewage—means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended and of Title XIV of Public Law 106–554 ''Certain Alaskan Cruise Ship Operations'', and regulations promulgated under either.

Untreated Sewage—means sewage that is not treated sewage.

Waters Of The Alexander Archipelago—means all waters under the sovereignty of the United States within or near Southeast Alaska as follows:

(1) Beginning at a point 58° 11–44 N, 136° 39–25 W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

58° 05–17 N, 136° 33–49 W and 58° 11–41 N, 136° 39–25 W [Cross Sound]
56° 09–40 N, 134° 40–00 W and 55° 49–15 N, 134° 17–40 W [Chatham Strait]
55° 49–15 N, 134° 17–40 W and 55° 50–30 N, 133° 54–15 W [Sumner Strait]
54° 41–30 N, 132° 01–00 W and 54° 51–30 N, 131° 20–45 W [Clarence Strait]
54° 51–30 N, 131° 20–45 W and 54° 46–15 N, 130° 52–00 W [Revillagigedo Channel]

(2) The portion of each such geodesic in paragraph (1) of this definition situated beyond 3 nautical miles from the baseline from which the breadth of the territorial seas is measured from the outer limit of the waters of the Alexander Archipelago in those five locations.

§ 159.307 Untreated sewage.

No person shall discharge any untreated sewage from a cruise vessel into the applicable waters of Alaska.

§ 159.309 Limitations on discharge of treated sewage or graywater.

(a) No person shall discharge treated sewage or graywater from a cruise vessel into the applicable waters of Alaska unless:

(1) The cruise vessel is underway and proceeding at a speed of not less than six knots;

(2) The cruise vessel is not less than one nautical mile from the nearest shore, except in areas designated by the Coast Guard in consultation with the State of Alaska;

(3) The discharge complies with all applicable cruise vessel effluent standards established pursuant to Pub. L. 106–554 and any other applicable law, and

(4) The cruise vessel is not in an area where the discharge of treated sewage or graywater is prohibited.

(b) Until such time as the Administrator promulgates regulations addressing effluent quality standards for cruise vessels operating in the applicable waters of Alaska, treated sewage and graywater may be discharged from vessels in circumstances otherwise prohibited under paragraph(a)(1) and (2) of this section provided that:

(1) Notification to the Captain of the Port (COTP) is made not less than 30 days prior to the planned discharge, and such notice includes results of tests showing compliance with this section;

(2) The discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102;

(3) The geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 milliliters (ml) and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

(4) Concentrations of total residual chlorine do not exceed 10.0 milligrams per liter (mg/l);

(5) Prior to any such discharge occurring, the owner, operator or master, or other person in charge of a cruise vessel, can demonstrate to the COTP that test results from at least five samples taken from the vessel representative of the effluent to be discharged, on different days over a 30-day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs (b)(2), (3) and (4) of this section; and

(6) To the extent not otherwise being done by the owner, operator, master or other person in charge of a cruise vessel, pursuant to § 159.317 of this subpart, the owner, operator, master or other person in charge of a cruise vessel shall demonstrate continued compliance through sampling and testing for conventional pollutants and residual chlorine of all treated sewage and graywater effluents periodically as determined by the COTP.

§ 159.311 Safety exception.

The regulations in this subpart shall not apply to discharges made for the purpose of securing the safety of the cruise vessel or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

§ 159.313 Inspection for compliance and enforcement.

(a) Cruise vessels operating within the applicable waters of Alaska are subject to inspection by the Coast Guard to ensure compliance with this subpart.

(b) An inspection under this section shall include an examination of the Sewage and Graywater Discharge Record Book required under § 159.315 of this subpart, environmental compliance records, and a general examination of the vessel. A copy of any entry in the Sewage and Graywater Discharge Record Book may be made and the Master of the vessel may be required to certify that the copy is a true copy of the original entry.

(c) A vessel not in compliance with this subpart may be subject to the penalties set out in § 159.321, denied entry into the applicable waters of Alaska, detained, or restricted in its operations by order of the COTP.

§ 159.315 Sewage and graywater discharge record book.

(a) While operating in the applicable waters of Alaska each cruise vessel shall maintain, in English, a legible Sewage and Graywater Discharge Record Book with the vessel's name and official number listed on the front cover and at the top of each page.

(b) Entries shall be made in the Sewage and Graywater Discharge Record Book whenever any of the following is released into the applicable waters of Alaska:

(1) Treated or untreated sewage;

(2) Graywater; or

(3) Sewage and graywater mixture.

(c) Each entry in the Sewage and Graywater Discharge Record Book shall, at a minimum, contain the following information:

(1) Name and location of each discharge port within the ship;

(2) Date the start of discharge occurred;

(3) Whether the effluent is treated or untreated sewage, graywater, or a sewage and graywater mixture and type of treatment used;

(4) Time discharge port is opened;

(5) Vessel's latitude and longitude at the time the discharge port is opened;

(6) Volume discharged in cubic meters;

(7) Flow rate of discharge in liters per minute;

(8) Time discharge port is secured;

(9) Vessel's latitude and longitude at the time the discharge port is secured; and

(10) Vessel's minimum speed during discharge.

(d) In the event of an emergency, accidental or other exceptional discharge of sewage or graywater, a statement shall be made in the Sewage and Graywater Discharge Record Book of the circumstances and reasons for the discharge and an immediate notification of the discharge shall be made to the COTP.

(e) Each entry of a discharge shall be recorded without delay and signed and dated by the person or persons in charge of the discharge concerned and each completed page shall be signed and dated by the master or other person having charge of the ship.

(f) The Sewage and Graywater Discharge Record Book shall be kept in such a place as to be readily available for inspection at all reasonable times and shall be kept on board the ship.

(g) The master or other person having charge of a ship required to keep a Sewage and Graywater Discharge Record Book shall be responsible for the maintenance of such record.

(h) The Sewage and Graywater Discharge Record Book shall be maintained on board for not less than three years.

§ 159.317 Sampling and reporting.

(a) The owner, operator, master or other person in charge of a cruise vessel that discharges treated sewage and/or graywater in the applicable waters of Alaska shall;

(1) Not less than 90 days prior to each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide to the COTP certification of participation under a Quality Assurance/Quality Control Plan (QA/QCP) accepted by the COTP for sampling and analysis of treated sewage and/or graywater for the current operating season;

(2) Not less than 30 days nor more than 120 days prior to each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide a certification to the COTP that the vessel's treated sewage and graywater effluents meet the minimum standards established by the Administrator, or in the absence of such standards, meet the minimum established in § 159.319 of this subpart;

(3) Within 30 days of each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide to the COTP a Vessel Specific Sampling Plan (VSSP) for review and acceptance, and undergo sampling and testing for conventional pollutants of all treated sewage and graywater effluents as directed by the COTP;

(4) While operating in the applicable waters of Alaska be subject to unannounced sampling of treated sewage and graywater discharge effluents, or combined treated sewage/graywater discharge effluents for the purpose of testing for a limited suite, as determined by the Coast Guard, of priority pollutants;

(5) While operating in the applicable waters of Alaska be subject to additional random sampling events, in addition to all other required sampling, of some or all treated sewage and graywater discharge effluents for conventional and/or priority pollutant testing as directed by the COTP;

(6) Ensure all samples, as required by this section, are collected and tested by a laboratory accepted by the Coast Guard for the testing of conventional and priority pollutants, as defined by this subpart, and in accordance with the cruise vessel's Coast Guard accepted QA/QCP and VSSP;

(7) Pay all costs associated with development of an acceptable QA/QCP and VSSP, sampling and testing of effluents, reporting of results, and any additional environmental record keeping as required by this subpart, not to include cost of federal regulatory oversight.

(b) A QA/QCP must, at a minimum include:

(1) Sampling techniques and equipment, sampling preservation methods and holding times, and transportation protocols, including chain of custody;

(2) Laboratory analytical information including methods used, calibration, detection limits, and the laboratory's internal QA/QC procedures;

(3) Quality assurance audits used to determine the effectiveness of the QA program; and

(4) Procedures and deliverables for data validation used to assess data precision and accuracy, the representative nature of the samples drawn, comparability, and completeness of measure parameters.

(c) A VSSP is a working document used during the sampling events required under this section and must, at a minimum, include:

(1) Vessel name;

(2) Passenger and crew capacity of the vessel;

(3) Daily water use of the vessel;

(4) Holding tank capacities for treated sewage and graywater;

(5) Vessel schematic of discharge ports and corresponding sampling ports;

(6) Description of discharges; and

(7) A table documenting the type of discharge, type of sample drawn (grab or composite), parameters to test for (conventional or priority pollutants), vessel location when sample drawn, date and time of the sampling event.

(d) Test results for conventional pollutants shall be submitted within 15 calendar days of the date the sample was collected, and for priority pollutants within 30 calendar days of the date the sample was collected, to the COTP directly by the laboratory conducting the testing and in accordance with the Coast Guard accepted QA/QCP.

(e) Samples collected for analysis under this subpart shall be held by the laboratory contracted to do the analysis for not less than six months, or as directed by the COTP.

(f) Reports required under this section may be written or electronic. If electronic, the reports must be in a format readable by Coast Guard and Alaska Department of Environmental Conservation data systems.

§ 159.319 Fecal coliform and total suspended solids standards.

(a) *Treated sewage effluent discharges.* Until such time as the Administrator promulgates effluent discharge standards for treated sewage, treated sewage effluent discharges in the applicable waters of Alaska shall not have a fecal coliform bacterial count of greater than 200 per 100 ml nor total suspended solids greater than 150 mg/l.

(b) *Graywater effluent discharges.* [Reserved].

§ 159.321 Enforcement.

(a) *Administrative Penalties.*

(1) *Violations.* Any person who violates this subpart may be assessed a

class I or class II civil penalty by the Secretary or his delegatee.

(2) *Classes of penalties.*

(i) *Class I.* The amount of a class I civil penalty under this section may not exceed $10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed $25,000. Before assessing a civil penalty under this subparagraph, the Secretary or his delegatee shall give to the person to be assessed such penalty written notice of the Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) *Class II.* The amount of a class II civil penalty under this section may not exceed $10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed $125,000. Except as otherwise provided in paragraph (a) of this section, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for hearing on the record in accordance with 5 U.S.C. 554. Proceedings to assess a class II administrative civil penalty under this section will be governed by 33 CFR Part 20.

(3) *Rights of interested persons.*

(i) *Public notice.* Before issuing an order assessing a class II civil penalty under this paragraph, the Secretary shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(ii) *Presentation of evidence.* Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under paragraph (a) of this section, and of the order assessing such penalty. In any hearing held under paragraph (a)(3) of this section, such person shall have a reasonable opportunity to be heard and present evidence.

(iii) *Rights of interested persons to a hearing.* If no hearing is held under paragraph (a)(2) of this section before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such an order, the Secretary or his delegatee to set aside such order and provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Secretary, or his delegatee, shall immediately set aside such order and provide a hearing in accordance with paragraph (a)(2)(ii) of this section. If the Secretary or his delegatee denies a hearing under this clause, the Secretary or his delegatee shall provide to the petitioner and publish in the **Federal Register** notice of and the reasons for such denial.

(b) *Civil judicial penalties.*

(1) *Generally.* Any person who violates this subpart shall be subject to a civil penalty not to exceed $25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

(2) *Limitation.* A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) of this section for the violation.

(c) *Determination of amount.* In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court or the Secretary or his delegatee shall consider the seriousness of the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

(d) *Criminal penalties.*

(1) *Negligent violations.* Any person who negligently violates this subpart commits a Class A misdemeanor.

(2) *Knowing violations.* Any person who knowingly violates this subpart commits a Class D felony.

(3) *False statements.* Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this subpart, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this subpart commits a Class D felony.

(e) *Awards.*

(1) The Secretary or his delegatee or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected to any individual who furnished information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or any Federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this paragraph.

(2) The Secretary, his delegatee, or a court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or any Federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a Federally recognized Tribe and an individual under paragraph (e)(1) of this section be eligible for an award, the Secretary, his delegatee, or the court, as the case may be, shall divide the amount equitably.

(f) *Liability in rem.* A cruise vessel operated in violation of this subpart is liable in rem for any fine imposed under paragraph (c) of this section or for any civil penalty imposed under paragraphs (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

Dated: July 5, 2001.

T.J. Barrett,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast.

[FR Doc. 01–18676 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu 01–051]

RIN 2115–AA97

Safety Zone; Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, HI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a temporary safety zone around position 21°–04.8′ N, 157°–49.5′ W, south of Oahu, Hawaii. This zone will extend from the surface of the ocean to the bottom. This zone is needed to protect mariners from the hazards associated with preparation of the Japanese Fisheries High School Training Vessel EHIME MARU for relocation. This vessel sank after being

struck by the submarine USS GREENEVILLE (SSN 772). Entry into this zone is prohibited unless authorized by the Captain of the Port Honolulu, HI.

DATES: This rule is effective from 7 a.m. HST July 14, 2001, until 4 p.m. August 1, 2001.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Boulevard, Honolulu, HI, 96813, who 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 Coast Guard Marine Safety Office Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Mark Willis, U.S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying this action's effective date would be contrary to the public interest since immediate action is needed to protect the vessels and mariners from the hazards associated with preparation of the Japanese Fisheries High School Training Vessel EHIME MARU for relocation. Details were not available 30 days prior to the event, thus, there was insufficient time to publish a proposed rule in advance of the event or to provide a delayed effective date. Under these circumstances, following normal rulemaking procedures would be impracticable.

Background and Purpose

On February 9, 2001, the Japanese Fisheries High School Training Vessel EHIME MARU was struck by the submarine USS GREENEVILLE (SSN 772) approximately 9 nautical miles south of Diamond Head on the island of Oahu, Hawaii. The EHIME MARU sank in approximately 2,000 feet of water. At the time of the sinking, 26 of the 35 crewmembers were successfully rescued. An extensive search failed to locate additional personnel and it is assumed that some, or all, of the nine missing crewmembers were trapped inside the vessel. The EHIME MARU is resting upright on the seafloor at position 21°–04.8′ N, 157°–49.5′ W. The U.S. Navy plans to prepare the EHIME MARU for transportation to shallow water by removing all booms, antennas, or other attached equipment that may interfere with this evolution. To protect vessels and mariners from the hazards associated with preparatory operations, the U.S. Coast Guard has established a temporary safety zone, with a radius of 1 nautical mile, centered on the vessels present location of 21°–04.8′ N, 157°–49.5′ W. This zone extends from the surface of the ocean to the bottom. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Honolulu, HI. The safety zone will be enforced by representatives of the Captain of the Port Honolulu. The Captain of the Port may be assisted by other federal agencies.

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). The U.S. Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic area affected by it.

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 U.S. Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zone and the short duration.

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

The U.S. Coast Guard has analyzed this rule under Executive Order 13132, and has determined 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) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The U.S. Coast Guard considered the environmental impact of this action and

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. From 7 a.m., July 14, 2001, to 4 p.m., August 1, 2001, a new § 165.T14–051 is temporarily added to read as follows:

§ 165.T14–051 Safety Zone: Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, Hawaii.

(a) *Location.* The following area is a safety zone: At the current location of the Japanese Fisheries High School Training Vessel EHIME MARU, all waters from the surface of the ocean to the bottom within a 1 nautical mile radius centered at 21°–04.8′ N, 157°–49.5′ W.

(b) *Designated Representative.* A designated representative of the U.S. Coast Guard Captain of the Port is any U.S. Coast Guard commissioned, warrant, or petty officer that has been authorized by the U.S. Coast Guard Captain of the Port, Honolulu, to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior U.S. Coast Guard boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless authorized by the U.S. Coast Guard Captain of the Port or his designated representatives. The Captain of the Port Honolulu will grant general permissions to enter the zones via Broadcast Notice to Mariners.

(d) *Effective dates.* This section is effective from 7 a.m. July 14, 2001, until 4 p.m., August 1, 2001.

Dated: July 11, 2001.

G.J. Kanazawa,

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

[FR Doc. 01–18678 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Memphis 01–007]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, LMR mile 531.3 to 537, Vaucluse Trenchfill

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Mississippi River from mile 531.3 to 537.0. This zone is needed to allow the Army Corps of Engineers' contractors to strengthen the integrity of the Vaucluse Trenchfill. Navigation within this zone will be prohibited from 6 a.m. to 6 p.m. (CDT) unless specifically authorized by the Captain of the Port Memphis.

DATES: This rule is effective from 6 a.m. (CDT) on June 11, 2001, through 6 p.m. (CDT) on September 2, 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 COTP Memphis 01–007 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 200 Jefferson Ave., Memphis, TN 38103–2300, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: COTP Memphis representative, LT Brian Meier, at (901) 544–3941 ext. 226.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This type of construction project requires specific river conditions that are difficult to predict. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to ensure that the project can be completed under optimal conditions. Reinforcement of the Vaucluse Trenchfill is also immediately needed to maintain the integrity of the right descending bank of the Mississippi River at the project site.

Background and Purpose

Due to bendway weir construction in the vicinity of the Vaucluse Trenchfill, LMR mile 533, the Coast Guard is establishing a safety zone for the Mississippi River from mile 531.3 to 537.0. Beginning on June 11, 2001, navigation will be closed every day from 6 a.m. to 6 p.m. (CDT) within the aforementioned zone. No vessels may enter or remain within this safety zone unless specifically authorized by the Captain of the Port Memphis. Vessels shall contact the M/V PATRICK on channel 13 or 16 for closure information and passing instructions. This safety zone will remain in effect until the construction project is completed. The contract construction time is approximately 83 days. This zone is needed to allow the Army Corps of Engineers' contractors to strengthen the integrity of the Vaucluse Trenchfill.

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). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The regulation will be in effect for a long period of time, but each day during night hours river traffic will be unrestricted, minimizing the impacts on routine navigation.

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 will not have a significant economic impact on a substantial number of small entities. The impacts on small entities are expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) g, of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

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.

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.

List of Subjects

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

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

PART 165—[AMENDED]

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

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

2. A new § 165.T08–038 is added to read as follows:

§ 165.T08–038 Safety Zone; Lower Mississippi River, LMR mile 531.3 to 537, Vaucluse Trenchfill.

(a) *Location.* The following area is a safety zone: the waters of the Mississippi River from mile LMR mile 531.3 to 537.0.

(b) *Effective date.* This section is effective daily from 6 a.m. to 6 p.m. (CDT) from June 11, 2001, through September 2, 2001.

(c) *Regulations.*

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

(2) No vessels may enter or remain within this safety zone unless specifically authorized by the Captain of the Port Memphis. Vessels shall contact the M/V PATRICK on channel 13 or 16 for closure information and passing instructions. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: June 8, 2001.

R.R. O'Brien, Jr.,

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

[FR Doc. 01–18677 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK40

Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve

for fiscal year 2001 (October 1, 2000, through September 30, 2001) are changed to show a 3.0% increase in these rates.

DATES: *Effective Date:* This final rule is effective July 26, 2001.

Applicability Date: The changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 10 U.S.C. 16131(b) for fiscal year 2001, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 3.0%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1999, through June 30, 2000, exceeds the total of the monthly Consumer Price Index-W for July 1, 1998, through June 30, 1999.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 3.0% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in fiscal year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 2000, in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date under the provisions of 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will 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 final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, 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.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 27, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: April 17, 2001.

Charles L. Cragin,

Acting Assistant Secretary of Defense for Reserve Affairs.

Approved: July 10, 2001.

F.L. Ames,

Rear Admiral, United States Coast Guard Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21 (subpart L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. Section 21.7636 is amended by revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), and (a)(3) to read as follows:

§ 21.7636 Rates of payment.

(a) * * *

(1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2000, and before October 1, 2001, to a reservist pursuing a program of education is the rate stated in this table:

Training	Monthly rate
Full time	$263.00
¾ time	197.00
½ time	131.00
¼ time	65.75

(2) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 2000, and before October 1, 2001, is the rate stated in this table:

(i)

Training period	Monthly rate
First six months of pursuit of training	$197.25
Second six months of pursuit of training	144.65
Remaining pursuit of training	92.05

* * * * *

(3) The monthly rate of basic educational assistance payable to a

reservist for pursuit of a cooperative course that occurs after September 30, 2000, and before October 1, 2001, is the rate stated in paragraph (a)(1) of this section for full-time training during that period of time.

(Authority: 10 U.S.C. 16131(b), (c); sec. 8203(b), Pub. L. 105–178, 112 Stat. 493–494)

* * * * *

[FR Doc. 01–18608 Filed 7–25–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK45

End of the Service Members Occupational Conversion and Training Program

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The amendments consist of removal of regulations that are no longer needed to administer the Service Members Occupational Conversion and Training Program. Veterans are no longer training under that program.

DATES: *Effective date:* July 26, 2001.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 202–273–7187.

SUPPLEMENTARY INFORMATION: The Service Members Occupational Conversion and Training Act (SMOCTA) (Subtitle G, Pub. L. 102–484) established a job-training program for some veterans. The program helped these veterans enter the civilian workforce through training in a stable and permanent position that involved significant training. VA made monthly payments to employers who employed and trained eligible veterans in these jobs, and made a final lump sum payment when the trainee had completed the training program and been employed for four months. The payments aided employers in defraying the necessary costs of training.

Based on statutory authority and regulations, employers may no longer apply for the monthly payments and may no longer apply for the lump sum payment. No one is training under SMOCTA, and VA is making no payments under that Act. The statutory date for beginning training has passed, and the last year in which funds were appropriated for this program was Fiscal Year 1995. There is no need for regulations to implement SMOCTA, nor is there any need for other regulations that refer to SMOCTA.

Administrative Procedure Act

The changes made by this final rule are nonsubstantive changes. This final rule merely removes unnecessary provisions that relate only to a training and payment program for which there no longer is statutory authority for training or payment. Accordingly, there is a basis for dispensing with prior notice and comment and a delayed effective date under the provisions of 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will 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 final rule will not cause employers to make changes in their activities because no one is training under SMOCTA. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, 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

There is no Catalog of Federal Domestic Assistance number for the program that this final rule affects.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: July 6, 2001.

P.A. Tracey,

Vice Admiral, USN, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: July 12, 2001.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set forth above, 38 CFR part 21 is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

§ 21.4131 [Amended]

2. In § 21.4131, paragraph (i) is removed and reserved.

§ 21.4135 [Amended]

3. In § 21.4135, paragraph (aa) is removed and reserved.

Subpart F–3 [Removed and Reserved]

Subpart F–3—Service Members Occupational Conversion and Training Program

4. Part 21, subpart F–3 is removed and reserved.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

5. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

§ 21.7131 [Amended]

6. In § 21.7135, paragraph (j) is removed and reserved.

§ 21.7131 [Amended]

7. In § 21.7135, paragraph (aa) is removed and reserved.

Subpart L—Educational Assistance for Members of the Selected Reserve

8. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

§ 21.7631 [Amended]

9. In § 21.7631, paragraph (f) is removed and reserved.

§ 21.7635 [Amended]

10. In § 21.7635, paragraph (w) is removed and reserved.

[FR Doc. 01–18609 Filed 7–25–01; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 169–0282; FRL–7013–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California SIP. These revisions were proposed in the **Federal Register** on January 10, 2001 and concern volatile organic compound (VOC) emissions from oil-effluent water separators and municipal solid waste disposal sites. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on August 27, 2001.

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

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

I. Proposed Action

On January 10, 2001 (66 FR 1927), EPA proposed to approve the following rules into the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	416	Oil-Effluent Water Separators	09/14/99	05/26/00
SJVUAPCD	4642	Solid Waste Disposal Sites	04/16/98	09/29/98

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period. During this period, we received a comment from the following party. Brad Poirez, ICAPCD; telephone call on February 12, 2001.

The comment and our response is summarized below.

Comment: ICAPCD commented that ICAPCD Rule 416 was incorrectly referenced in the SUMMARY section of the proposed rule.

Response: EPA concurs and ICAPCD Rule 416 is correctly referenced in the SUMMARY section of today's final rule.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(266)(i)(B)(*4*) and (c)(279)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(266) * * *

(i) * * *

(B) * * *

(*4*) Rule 4642, adopted on April 16, 1998.

* * * * *

(279) * * *

(i) * * *

(A) * * *

(*3*) Rule 416, adopted on September 14, 1999.

* * * * *

[FR Doc. 01–18535 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7012–9]

Clean Air Act Full Approval of Operating Permits Program in Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the Alaska Department of Environmental Conservation (Alaska) for the purpose of complying with federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA published final interim approval to Alaska's air operating permit program on December 5, 1996. Alaska has revised its operating permits program to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on September 24, 2001 without further notice, unless EPA receives adverse comment by August 27, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Written comments should be addressed to Denise Baker, Environmental Protection Specialist (OAQ–107), Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State of Alaska's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the State documents relevant to this action are also available for public inspection at Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, AK, 99801–1796 and at Alaska Department of Environmental Conservation, 555 Cordova Street, Anchorage, AK, 99501–2617. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Is the Title V Air Operating Permits Program?

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA requirements apply to the source and whether the source is in compliance with those requirements.

Sources required to obtain an operating permit under the title V program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter; those that emit 10 tons per year or more of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential to emit 50 tons per year or more of volatile organic compounds or nitrogen oxides.

B. What Is the Status of Alaska's Title V Air Operating Permits Program?

The State of Alaska (Alaska or State) originally submitted its application for the title V air operating permits program to EPA in May 1995.

Where an operating permits program substantially, but not fully, meets the criteria outlined in the implementing regulations codified in 40 Code of Federal Regulations (CFR) part 70, EPA is authorized to grant interim approval contingent on the state revising its program to correct the deficiencies. Because the operating permits program originally submitted by Alaska in 1995 substantially, but not fully, met the requirements of part 70, EPA granted interim approval to Alaska's program in an action published on December 5, 1996 (61 FR 64463). The interim approval notice identified the 19 remaining conditions that Alaska must meet in order to receive full approval of its title V air operating permits program.

This document describes the changes Alaska has made to its operating permits program since we granted Alaska's program interim approval and the action EPA is taking in response to those changes.

II. What Changes Has Alaska Made To Address the Interim Approval Issues?

On June 2, 1998, Alaska sent a letter to EPA addressing all 19 of the interim approval issues and requesting full program approval of the State's air operating permits program. EPA has reviewed the program revisions submitted by Alaska and has determined that its operating permits program now qualifies for full approval. This section describes the interim approval issues identified by EPA in granting the Alaska program interim approval and the changes Alaska has made to address those issues.

A. Applicability of Permit Program Requirements

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska definition of 'regulated air contaminant' in AS 46.14.990(21) is inconsistent with the EPA definition of the term 'regulated air pollutant' in 40 CFR 70.2 in that it does not adequately cover pollutants required to be regulated under section 112(j) of the Act. As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its definition of 'regulated air contaminant' is consistent with EPA's definition of 'regulated air pollutant' in 40 CFR 70.2.'' Alaska, in its June 2, 1998, submittal stated that ''[a]ll of the provisions of 40 CFR part 63, subpart B which implement section 112(j) and relate to operating permits are either adopted by reference, or included in the adopting language of 18 AAC 50.040(c)(2). 18 AAC 50.040(c)(2)(B) states that the provisions of 40 CFR part 63, subpart B apply to the facility on the same date that a pollutant would become a 'regulated air pollutant' under the federal definition. AS 46.14.280(a)(3)(B) requires a permit to be revised for a 112(j) equivalent emission limitation in the same manner as for any other new federal standard.'' EPA believes that 18 AAC 50.040(c)(2) and AS 46.14.280(a)(3)(B) support Alaska's assertion and resolve this issue.

B. Applicable Requirements

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska definition of 'applicable requirement' does not include all of the EPA regulations implementing title VI (40 CFR part 82) but only subparts B and F. Although EPA has proposed to revise 40 CFR part 70 to limit the definition of 'applicable requirement' to only those provisions promulgated under sections 608 and 609 of the Act (which EPA has promulgated in 40 CFR part 82, subparts B and F), this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must adopt and submit appropriate revisions as a

condition of interim approval.'' Alaska, in its June 2, 1998, submittal, provided documentation that its regulations at 18 AAC 50.040(d) had been amended to broaden the adoption by reference to include all of Part 82. The amendment was effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

C. Authority To Implement Section 112 Requirements

EPA, in its December 5, 1996, **Federal Register**, stated that ''Alaska has not adopted by [sic] the requirements of 40 CFR part 61, subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). EPA is requiring, as a condition of full approval, that Alaska update its incorporation by reference to include all of the NESHAP that currently apply to title V sources in Alaska.'' This issue was made moot by EPA publication of a rescission of subpart I in the **Federal Register** dated December 30, 1996, 61 FR 68971.

D. Insignificant Emission Units

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program improperly exempts insignificant sources subject to applicable requirements from monitoring, recordkeeping, reporting, and compliance certification requirements. Alaska must eliminate this exemption as a condition of full approval.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations to remove the exemption of insignificant sources from these requirements. The revised rules, at 18 AAC 50.335(q)(5) and (6), and 18 AAC 50.350(m), ''specify compliance certification for IEUs based on reasonable inquiry, and, if necessary to assure compliance with air quality control requirements identified in the permit, monitoring, record keeping, or reporting.'' The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

E. Emissions Trading Provided for in Applicable Requirements

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not contain a provision implementing the part 70 requirement that the permitting authority must include terms and conditions, if the permit applicant requests them, for trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases without a case-by-case approval of each emissions trade. See 40 CFR 70.6(a)(10). As a condition of full approval, Alaska must ensure that its program includes the necessary provisions to meet the requirements of 40 CFR 70.6(a)(10).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(h), 18 AAC 50.350(d)(3), and 18 AAC 50.350(e)(4), to allow for such trading. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

F. Inspection and Entry Requirements

EPA, in its December 5, 1996, **Federal Register**, stated that ''Part 70 requires each title V permit to contain a provision allowing the permitting authority or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform specified inspection and entry functions. See 40 CFR 70.6(c)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 CFR 70.6(c)(2) and imposes no greater restrictions on the State's inspection authority than exist under federal law.'' Alaska, in its June 2, 1998, submittal, provided an opinion from its Attorney General's Office addressing inspection and entry requirements associated with Alaska's title V program. The opinion notes that ADEC's operating permit regulations, at AS 46.14.140(a)(4)(C), now require the inclusion of a standard permit condition addressing inspection and entry. The opinion states that ''[t]his standard provision, requiring the permittee to consent to entry and inspection for specified purposes will be contained in all operating permits.'' Based on this opinion, EPA concludes that consent to entry for the purposes specified in AS 46.14.140(a)(4)(C) is effectively granted at any source possessing a title V permit issued by Alaska. In addition, Attorney General's opinion states that Alaska's inspection and entry authority is not more restrictive than that under federal law. Specifically, the Attorney General's Office opined that: (1) Under the Alaska program, operating permit holders have no ''reasonable expectation of privacy'' as to regulated subject matter and that warrantless search requirements are permissible; (2) if consent to entry and inspection is denied, a warrant can be easily obtained; and (3) Alaska's consent requirements ''do not constrain traditional exceptions to warrant requirements, and these exceptions are recognized in Alaska.'' EPA is satisfied that Alaska's inspection and entry authority imposes no greater restrictions on the State's inspection authority than exist under federal law.

G. Progress Reports

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not require the submission of progress reports, consistent with the applicable schedule of compliance and 40 CFR 70.5(c)(8), to be submitted in accordance with the period specified in an applicable requirement. See 40 CFR 70.6(c)(4). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(4).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(i) and 18 AAC 50.350(k)(3) to require applicants to submit proposed permit terms that include more frequent progress reports, if required by the applicable requirement, and to require permits to contain a requirement for more frequent progress reports, if required by the applicable requirement. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

H. Compliance Certification

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not meet the requirements of part 70 that a permitting program contain requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards or work practices. See 40 CFR 70.6(c)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(5).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(q)(5), 18 AAC 50.350(j), and 18 AAC 50.350(m), to ensure that compliance certifications would be required for all permit terms and conditions. EPA's main concern, as identified in the September 1996 **Federal Register** proposing final interim approval for Alaska's Air Operating Permits Program, had been inclusion of requirements to certify compliance with such terms as monitoring, recordkeeping, reporting and compliance plans. Alaska had already revised its regulations to mostly include these by the time the December 5, 1996, **Federal Register** had been published. The current revisions are mostly fine tuning, including compliance certification for insignificant sources, and accounting for provisions

established through administrative, minor, or major permit revisions. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

I. General Permits

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska provisions for general permits fail to comply with the requirements of part 70 in one respect. The Alaska provisions do not require that applications for general permits which deviate from the requirements of 40 CFR 70.5 otherwise meet the requirements of title V. See 40 CFR 70.6(d)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that applications for general permits meet the requirements of title V.'' Alaska, in its June 2, 1998, submittal, submitted documentation that it had revised its regulations at 18 AAC 50.380 (most importantly at 50.380(c) and (d)) to identify what information had to be in the applications for General Permits. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this action.

J. Affirmative Defense for Emergencies

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not comply with the requirement of part 70 with respect to the provisions for an affirmative defense to an action brought for noncompliance with a technology-based limitation in a title V permit. The Alaska regulations include a definition of 'technology-based standard' which is broader than allowed by part 70 and the Alaska program gives a permittee up to one week after the discovery of an exceedance to provide ADEC with written notice rather than within two working days as required by 40 CFR 70.6(g)(3)(iv). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its emergency provisions are consistent with the requirements of 40 CFR 70.6(g).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.990(87) to revise its definition of ''technology-based standard'' to be consistent with part 70. Alaska also revised 18 AAC 50.235(a) to require written notice of an exceedance due to an unavoidable emergency, malfunction, or nonroutine repair, within two days, rather than within one week. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

K. Off-Permit Provisions

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not comply with the part 70 'off-permit' provisions which require the permittee to keep a record at the facility describing each off-permit change and to provide 'contemporaneous' notice of each off-permit change to EPA and the permitting authority. See 40 CFR 70.4(b)(14). Although EPA has proposed to revise 40 CFR part 70 to eliminate the off-permit requirements, this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent with part 70 in this respect and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must ensure that its program requires notice and records for all off-permit changes as a condition of full approval.'' EPA has not revised part 70 as proposed with respect to off-permit changes. Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.365(b) to show that the requirements of (b), including the recordkeeping and notification requirements, applied to all ''not insignificant'' sources. 18 AAC 50.365(b), as amended, is consistent with the language of 40 CFR 70.4(b)(14). The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

L. Statement of Basis

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not require the permitting authority to provide and send to EPA, and to any other person who requests it, a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). See 40 CFR 70.7(a)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program satisfies the requirements of 40 CFR 70.7(a)(5).'' This issue was inadvertently identified as an Interim Approval issue in the December 5, 1996, **Federal Register**. Although identified in the September 1996 proposed interim approval of the Alaska Air Operating Permits Program as an approval issue, Alaska revised its regulations at 18 AAC 50.340(j) prior to EPA's final interim approval of the Alaska program. EPA is satisfied that section 340(j) adequately provides for the development of a Statement of Basis.

M. Administrative Amendments

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program, which allows alterations in the identification of equipment or components that have been replaced with equivalent equipment or components to be made by administrative amendment, does not comply with the part 70 provisions which authorize States to allow certain ministerial types of changes to title V permits to be made by administrative amendment. See 40 CFR 70.7(d). As a condition of full approval, Alaska must revise 18 AAC 50.370(a)(5)(D) to expand the prohibition to include modifications and reconstructions made pursuant to 40 CFR parts 60, 61, and 63, or to eliminate 18 AAC 50.370(a)(5) from the list of changes that may be made by administrative amendment.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.370(a)(5)(D) to prohibit administrative revisions for equipment which has been reconstructed or modified under 40 CFR parts 60, 61, and 63. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

N. Minor Permit Modifications

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not comply with the part 70 provisions which require States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e), for several reasons. First, the Alaska program does not ensure that 'every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms shall be considered significant.' See 40 CFR 70.7(e)(4). Second, the Alaska program does not ensure that an application for a permit modification must include a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. 40 CFR 70.7(e)(2)(ii)(A). Finally, the Alaska program fails to include provisions which allow minor permit modification procedures to be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. See 70.7(e)(2)(B). As a condition of full approval, Alaska must demonstrate

to EPA that its program includes the necessary provisions to meet the requirements of 40 CFR 70.7(e)(2)(B).'' Alaska, in its June 2, 1998, submittal, provided documentation that: (a) it revised its regulations at 18 AAC 50.375(a)(1)(D) to more closely track part 70 language in excluding from the minor permit revision process new terms or conditions which would involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, or relax an existing reporting or recordkeeping requirement; (b) it revised its regulations at 18 AAC 50.375(b) to clearly identify that the permittee, for minor permit modifications, would describe each change, the emissions resulting from the change, and any new requirements which would apply as a result;'' (c) the third issue was a moot issue because the Alaska program does not include economic incentives, marketable permits, or emissions trading. EPA in its September 1996 **Federal Register** proposing interim approval of the Alaska Air Operating Permits Program, indicated that there were instances where part 63 standards allowed for the minor modification permit procedures involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches. However, on revisiting the issue, EPA was unable to locate any part 63 standards which include such a provision. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

O. Group Processing of Minor Permit Modifications

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not conform with the provisions of part 70 which allow a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source in that the Alaska program does not contain any thresholds for determining whether minor permit modifications may be processed as a group. See 40 CFR 70.7(e)(3). As a condition of full approval, Alaska must demonstrate that its group processing procedures are consistent with the requirements of 40 CFR 70.7(e)(3).'' Alaska, in its June 2, 1998, submittal, documented its removal of the group processing of minor permit modifications provision from its regulations at 18 AAC 50.375(b)(5), (c), (d), and (e). Group processing of such modifications was optional under at 40 CFR 70.7(e)(3) so this is an acceptable resolution of this issue. These revisions were effective June 14, 1998.

P. Significant Permit Modifications

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not address the part 70 requirement that a State provide for a review process that will assure completion of review of the majority of significant permit modifications within 9 months after receipt of a complete application. 40 CFR 70.7(e)(4)(ii). As a condition of full approval, Alaska must provide assurances that its program is designed and will be implemented so as to complete review on the majority of significant permit modifications within this timeframe.'' In the cover letter to the June 2, 1998, Michele Brown, Commissioner of the State of Alaska, Department of Environmental Conservation, committed to ''allocating sufficient resources in the Air Quality Maintenance Section to issue the majority of Significant Permit Revisions within 9 months of receiving complete applications.'' EPA is satisfied that this resolves the issue.

Q. Reopenings

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program provisions for reopenings fail to comply with part 70 in several respects. First, the Alaska program does not require reopening in the event that the effective date of a new applicable requirement is later than the permit expiration date and the permit has been administratively extended. See 40 CFR 70.7(f)(1)(i). Second, the Alaska program does not comply with part 70 in that the Alaska program merely authorizes ADEC to reopen a permit under specified circumstances, where as part 70 requires that a permit be reopened if ADEC or EPA determine such circumstances exist. See 40 CFR 70.7(f)(2)(iii). Third, the Alaska program also fails to contain required procedures in the event of a reopening for cause by EPA. See 40 CFR 70.7(g)(2) and (4). Finally, the Alaska program does not include provisions assuring that reopenings are made as expeditiously as practicable. See 40 CFR 70.7(f)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its provisions for reopenings comply with the requirements of 40 CFR 70.7(f) and (g).'' Alaska, in its June 2, 1998, submittal, provided documentation that: (1) It had revised its regulations at 18 AAC 50.341(a), (b), (f), and (g) to provide that Alaska would reopen permits within 18 months after the promulgation by EPA of a new requirement applicable to the facility; (2) it had revised its regulations at 18 AAC 50.341(a), (c), (f), and (g) to provide that Alaska would be required, rather than merely authorized, to reopen permits under specified circumstances; (3) it had revised its regulations at 18 AAC 50.341(a), (d), (e), (f), and (g) to specify procedures in the event of reopening for cause by EPA. To resolve the fourth part of this issue, Michele Brown, in the June 2, 1998, cover letter submitting the program revisions, committed ''to allocating sufficient resources in the Air Quality Maintenance Section to complete required permit re-openings for cause as expeditiously as practicable.'' The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

R. Public Petitions to EPA

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not prohibit issuance of a permit if EPA objects to the permit after EPA's 45-day review period (i.e., in response to a petition). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that Alaska's provisions regarding public petitions to EPA comply with the requirements of 40 CFR 70.8(d).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.340(g)(2)(B) adding the appropriate prohibitory language. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

S. Public Participation

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he Alaska program does not conform to the part 70 requirement that the contents of a title V permit not be entitled to confidential treatment. See 40 CFR 70.4(b)(3)(viii). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that nothing in a title V permit will be entitled to confidential treatment.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations by adding 18 AAC 50.350(n) which prohibits the inclusion of ''information that is protected as a trade secret under AS 45.50.910–45.50.945.'' The revision was effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

III. What Other Changes Has Alaska Made to Its Program—Outside of Addressing the Interim Approval Issues?

Subsequent to interim approval of Alaska's title V program, the State

legislature enacted Alaska Statute 09.25.450 (herein ''Audit Law''), which establishes a privilege for certain information contained in environmental audit reports conducted by facilities, and also establishes immunity from enforcement for certain violations that are voluntarily reported. Because some states have enacted audit laws that have significantly altered their enforcement authorities, EPA in 1997 issued a guidance document entitled ''Statement of Principles, Effect of State Audit Immunity/Privilege Laws on Enforcement Authority for Federal Programs'' (February 14, 1997) (''Statement of Principles'') to guide the Agency's review of the impact of such laws for purposes of approval or authorization of federal programs. EPA evaluated Alaska's Audit Law with regard to the Statement of Principles to determine the extent to which the required title V enforcement authorities may be impacted.

As a part of this examination, EPA requested that the State provide an opinion from its Attorney General's Office addressing the interrelationship of the Audit Law and the state's enforcement authorities required for approval under part 70. Alaska provided such an opinion, dated March 14, 2000, signed by Assistant Attorney General Christopher Kennedy (herein ''Kennedy Opinion'').[1] This opinion supplements an April 28, 1997, opinion, signed by Attorney General Bruce Botelho, that addresses the Audit Law more generally. The latter opinion, though a useful interpretation of the Audit Law, was not drafted in response to an EPA request and does not explicitely address EPA program approval requirements. EPA is relying upon both of these opinions in issuing today's full approval action.

EPA finds that the Audit Law, as interpreted by the two Attorney General opinions, does not affect Alaska's enforcement authorities such as to preclude the granting of full approval to the State's Title V program. The major points of EPA's reasoning in making this finding are summarized below.

The Kennedy Opinion adopts an analysis similar to that used by the New Hampshire Attorney General's Office in interpreting that State's audit law as being consistent with the part 70 approval requirements.[2] The Kennedy Opinion addresses each of the points raised in the New Hampshire opinion, and concludes that Alaska's Audit Law is similarly structured so as to not impede the exercise of state enforcement authorities necessary for approval under part 70.

As EPA has noted in the context of its own self-disclosure policy (60 FR 66710, Dec. 22, 1995), the Agency is, as a matter of policy, opposed to the creation of a privilege for information related to violations of federal environmental laws. As a matter of state program approval, EPA's Statement of Principles addresses privileges created under state audit laws and notes that such laws must not impede a state's ability to obtain information needed to identify noncompliance and criminal conduct. Specifically, in the present context, a state must be able to gather information as required under part 70 and must preserve the right of the public to obtain information about noncompliance, report violations, and pursue enforcement under the Clean Air Act's citizen enforcement provisions. Finally, an audit law privilege may not apply in a criminal proceeding.

With regard to the privilege provisions of the Audit Law, the Kennedy Opinion states that the Audit Law would not threaten the State's ability to discover title V permit violations. This is in part because, as required by part 70, Alaska's program requires reporting of title V permit violations. Thus, the Audit Law's privilege and immunity provisions, applying as they do only to ''voluntary'' assessments of compliance, do not extend to title V permit violations uncovered by compliance auditing that is mandated by the Clean Air Act and the Title V regulations. Moreover, the Audit Law privilege does not extend to information required to be collected, developed, maintained, or reported under an environmental law. AS 09.25.460(a)(1). The Audit Law privilege does not apply in criminal proceedings. AS 09.25.450(a).

The Statement of Principles also addresses the possible effects of a state audit law upon a state's required authority to assess civil and criminal penalties. In short, where title V program approval is concerned, a state audit law must not impede the state's authority to recover civil penalties for significant economic benefit, repeat violations, violations of judicial and administrative orders, violations resulting in serious harm, or violations that may present imminent and substantial endangerment. The audit law also must not impede a state's authority to collect criminal fines and/or sanctions for knowing violations.

The Kennedy Opinion explains that the Audit Law excludes from its coverage any violation that result in or poses an imminent and present threat of substantial injury to people, property, or the environment. AS 09.25.465(a)(2), 09.25.475(b). Moreover, as noted above, violations of a title V permit would generally not qualify for coverage under the Audit Law, to the extent they are discovered during the course of an audit mandated by the Clean Air Act or applicable regulations. The Kennedy Opinion notes that the Audit Law expressly excludes from coverage violations of administrative or court orders. AS 09.25.480(b).

Regarding repeat violations and economic benefit, which are not explicitly addressed in the Kennedy Opinion, EPA notes that, for the former, the Audit Law's immunity provisions do not apply where there has been a pattern of same or similar violations by the facility or associated facilities within the 3 years preceding the violation for which the facility seeks coverage under the Audit Law. AS 09.25.480(a)(1)(B). Regarding economic benefit, the Audit Law's immunity provisions do not apply where the facility has realized substantial economic savings as a result of its noncompliance. AS 09.25.480(a)(3).

EPA finds that the Alaska Audit Law, as interpreted by the two Attorney General opinions submitted by the State, is sufficiently limited in scope so as not to preclude full approval of the State's title V program. It is EPA's intent to observe how the Audit Law is implemented in practice and how it is interpreted in state courts and administrative venues. If the evidence suggests that any of the key findings made today are incorrect, EPA may in the future revisit the effect of the Audit Law on the adequacy of Alaska's title V program.

IV. Final Action

EPA is granting full approval of the State of Alaska's operating permits program. This approval does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 55815–55818; 59 FR 42552, 42554 (August 18, 1994).

V. What Happens if EPA Gets Comments on This Federal Register?

EPA has reviewed the State of Alaska's submittal and has determined that its operating permits program now qualifies for full approval. Accordingly, EPA is taking final action to fully

[1] EPA accepted the New Hampshire Attorney General's opinion as ensuring that the staet met the minimum requirements necessary for approval of a Title V program. *See* 61 FR 51370 (Oct. 2, 1996).

[2] EPA accepted the New Hampshire Attorney General's opinion as ensuring that the state met the minimum requirements necessary for approval of a Title V program. *See*, 61 FR 51370 (Oct. 2, 1996).

approve Alaska's air operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the title V operating permits program submitted by the State of Alaska should adverse comments be filed. This rule will be effective September 24, 2001 without further notice unless the Agency receives adverse comments by August 27, 2001.

If EPA receives such comments, then EPA will publish a notice withdrawing this final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 24, 2001 and no further action will be taken on the proposed rule.

VI. What Administrative Requirements Apply to This Action?

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. 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 State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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 this is not a ''major'' rule as defined by 5 U.S.C. 804(2), EPA will not submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 *et seq.*

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 24, 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

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

Dated: July 3, 2001.

Charles Findley,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to part 70, the entry for Alaska in alphabetical order is amended by revising paragraph (a) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alaska

(a) Alaska Department of Environmental Conservation: submitted on May 31, 1995, as supplemented by submittals on August 16, 1995, February 6, 1995, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996; interim approval effective on December 5, 1996; revisions submitted on June 2, 1998; full approval effective on September 24, 2001.

* * * * *

[FR Doc. 01–18405 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket OR–01–005a; FRL 7018–6]

Finding of Attainment for PM–10; Oakridge, Oregon, PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Oakridge nonattainment area in Oregon has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 2000.

DATES: This direct final rule will be effective September 24, 2001, unless EPA receives adverse comment by August 27, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Steven K. Body, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m. at this same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION: Throughout this document, the words ''we,'' ''us,'' or ''our'' means the Environmental Protection Agency (EPA).

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I. Background

A. Designation and Classification of the Oakridge PM–10 Nonattainment Area

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or Act) were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. *See generally* 42 U.S.C. 7407(d)(4)(B). In addition, pursuant to section 107(d)(3) of the CAA, EPA is authorized to redesignate areas as nonattainment for PM–10 on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that EPA deems appropriate. In 1991, EPA notified the Governor of Oregon that, because of recorded violations of the 24-hour PM–10 standard in the Oakridge area that occurred after January 1, 1989, EPA believed that the area's PM–10 designation should be revised to nonattainment. *See* 56 FR 16724 (April 22, 1991). After Oregon submitted additional information regarding the designation for the Oakridge area and after notice and an opportunity for public comment, EPA designated the Oakridge area nonattainment for PM–10 effective January 20, 1994. *See* 58 FR 67334 (December 21, 1993).

As a newly designated PM–10 nonattainment area, the Oakridge area was classified as a moderate nonattainment area by operation of law. *See* CAA section 188(a). Pursuant to section 188(c)(1) of the Act, the attainment date for the Oakridge area was to be no later than the end of the sixth calendar year after the area was designated nonattainment. Because the Oakridge area was designated nonattainment for PM–10 effective January 20, 1994, the attainment date for the Oakridge area is December 31, 2000.

B. How Does EPA Make Attainment Determinations?

Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM–10 nonattainment areas attained the PM–10 NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A and B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three-year period (for example 1998, 1999, and 2000 for areas with a December 31, 2000 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM–10. *See* 40 CFR part 50 and appendix K.

C. What PM–10 Planning Has Occurred for the Oakridge PM–10 Nonattainment Area?

After the Oakridge area was designated nonattainment for PM–10, the Lane Regional Air Pollution Authority (LRAPA), in cooperation with local officials, developed a control strategy that consisted of a residential wood burning combustion program. The program included public education and outreach efforts on how to burn wood with reduced emissions as well as a wood stove curtailment program designed to reduce wood burning during periods of adverse meteorology. On March 15, 1999, EPA took direct final action approving the PM–10 SIP for Oakridge. See 64 FR 12751.

II. EPA's Action

As discussed above, whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. *See* 40 CFR part 50 and 40 CFR part 50, appendix K. For an area such as Oakridge, with a December 31, 2000 attainment date, EPA considers the data reported for calendar years 1998, 1999, and 2000.

LRAPA has established one PM–10 SLAMS monitoring site in the Oakridge PM–10 nonattainment area at 47674 School Street. LRAPA began monitoring

for PM–10 at that site in 1989. The site operated in 1989 through 2000. The monitoring site meets EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and continues to monitor for PM–10.

There were no exceedences of the 24-hour PM–10 standard in the years 1998, 1999, and 2000. Therefore, the expected exceedence rate is 0.0, which shows attainment of the 24-hour PM–10 standard. The average of the annual PM–10 concentration averaged over the three years prior to the attainment date (1998, 1999, and 2000) is 19.4 ug/m3. This concentration is below the level of the annual standard of 50 ug/m3. Therefore, EPA finds that the Oakridge area attained the PM–10 standards by the attainment date of December 31, 2000.

This finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because Oregon has not, for the Oakridge area, submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Oakridge PM–10 nonattainment area until such time as Oregon meets the CAA requirements for redesignations to attainment.

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (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). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities because it merely makes a determination based on air quality data and does not impose any requirements. This action does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it does not impose any enforceable duties.

This action also does not have tribal implications because it will 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). The action merely makes a determination based on air quality data and does not impose any requirements and therefore does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act.

This action also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under Executive Order 12866.

This action does not involved technical standards. 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. In addition, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Because this in not a ''major'' rule as defined by 5 U.S.C. 804(2), EPA will not submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 *et seq.*

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 24, 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–18648 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket OR–01–004a; FRL–7018–5]

Finding of Attainment for PM–10; Lakeview, Oregon, PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Lakeview nonattainment area in Oregon has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 1999.

DATES: This direct final rule will be effective September 24, 2001, unless EPA receives adverse comment by August 27, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Steven K. Body, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8:00 AM to 4:30 PM) at this same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

Throughout this document, the words ''we,'' ''us,'' or ''our'' means the Environmental Protection Agency (EPA).

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III. Administrative Requirements

I. Background

A. Designation and Classification of the Lakeview PM–10 Nonattainment Area

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA) were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. *See generally* 42 U.S.C. 7407(d)(4)(B). In addition, pursuant to section 107(d)(3) of the CAA, EPA is authorized to redesignate areas as nonattainment for PM–10 on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that EPA deems appropriate. In December 1992, the Governor of Oregon requested that, because of recorded violations of the 24-hour PM–10 standard in the Lakeview area that occurred in 1991 and 1992, the Lakeview area should be reclassified nonattainment for PM–10. *See* 58 FR 34403 (June 25, 1993). Accordingly, after notice and an opportunity for public comment, EPA designated the Lakeview area nonattainment for PM–10 effective January 20, 1994. *See* 58 FR 67334 (December 21, 1993).

As a newly designated PM–10 nonattainment area, the Lakeview area was classified as a moderate nonattainment area by operation of law. *See* CAA section 188(a). Pursuant to section 188(c)(1) of the Act, the attainment date for the Lakeview area was to be no later than the end of the sixth calendar year after the area was designated nonattainment. Because the Lakeview area was designated nonattainment for PM–10 effective October 25, 1993, the attainment date for the Lakeview area is December 31, 1999.

B. How Does EPA Make Attainment Determinations?

Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM–10 nonattainment areas attained the PM–10 NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A &B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three-year period (for example 1997, 1998, and 1999 for areas with a December 31, 1999 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM–10. *See* 40 CFR part 50 and appendix K.

C. What PM–10 Planning has Occurred for the Lakeview PM–10 Nonattainment Area?

After the Lakeview area was designated nonattainment, the State of Oregon, in cooperation with local officials, developed a control strategy that consisted of a residential wood burning combustion program. The program included public education and outreach efforts on how to burn wood with reduced emissions as well as a wood stove curtailment program designed to reduce wood burning during periods of adverse meteorology. Oregon submitted the control strategies as a revision to the State Implementation Plan (SIP) in 1995. EPA approved the SIP revision on September 21, 1999 (64 FR 51051). *See* 40 CFR 52.1970 (128).

II. EPA's Action

A. What Does the Air Quality Data Show as of the December 31, 1999 Attainment Date?

As discussed above, whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. *See* 40 CFR part 50 and 40 CFR part 50, appendix K. For an area with a December 31, 1999, attainment date, EPA considers data reported for calendar years 1997, 1998, and 1999.

The State of Oregon has established and operates one PM–10 SLAMS monitoring site in the Lakeview PM–10 nonattainment area near the intersection of Center and ''M'' Streets which was operating during 1997 through the present. In addition, Oregon established monitoring sites at the Lakeview Grange Hall and at 336 N. ''L'' street, both of which operated in 1998 and 1999. These three monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Only the site at Center and ''M'' Streets continues to monitor for PM–10.

There were no reported exceedences of the 24-hour PM–10 NAAQS at any of the sites during 1997 through 1999. Therefore, the expected exceedence rate is 0.0 for each of the three sites, which shows attainment of the 24-hour PM–10 standard. The average of the annual average for the years 1997 through 1999 at the Center and ''M'' site, the only site for which a three-year average can be calculated, is 21 ug/m3, which is below the level of the annual PM–10 standard of 50 ug/m3. Therefore, EPA finds that the Lakeview PM–10 nonattainment area attained the PM–10 standards by the attainment date of December 31, 1999.

This finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because Oregon has not, for the Lakeview area, submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Lakeview PM–10 nonattainment area until such time as Oregon meets the CAA requirements for redesignations to attainment.

B. Does the More Recent Air Quality Data Also Show Attainment?

The attainment date for the Lakeview PM–10 nonattainment area is December 31, 1999, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1997, 1998, and 1999. Beginning in January 2000 the Lakeview Grange Hall and 336 N. ''L'' street sites discontinued operation. EPA also reviewed the air quality data collected at the Center and ''M'' monitoring site through 2000. There were no exceedences of the 24-hour standard in 2000 at that site. Likewise, the annual average from the Center and ''M'' site was 20 ug/m3, which is below the level of the annual standard. There was insufficient data to determine an annual average from the other two sites.

III. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (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). Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities because it merely makes a determination based on air quality data and does not impose any requirements. This action does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) because it does not impose any enforceable duties.

This action also does not have tribal implications because it will 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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, ''Federalism'' (64 FR 43255, August 10, 1999). The action merely makes a determination based on air quality data and does not impose any requirements and therefore does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act.

This action also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under Executive Order 12866.

This action does not involve technical standards. 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. In addition, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because this in not a ''major'' rule as defined by 5 U.S.C. 804(2), EPA will not submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 *et seq.*

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 24, 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–18646 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301142; FRL–6787–8]

RIN 2070–AB78

Diazinon, Parathion, O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate (Disulfoton), Ethoprop, and Carbaryl; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific tolerances listed in the regulatory text for the insecticides diazinon, parathion, *O,O*-Diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate (disulfoton), ethoprop, and carbaryl. The regulatory actions in this rule are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. This document counts 24 tolerance reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective October 24, 2001. Objections and requests for hearings, identified by docket control number OPP–301142, must be received by EPA on or before September 24, 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 IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301142 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; and e-mail address: nevola.joseph@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–301142. 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

A. What Action is the Agency Taking?

This final rule revokes the FFDCA tolerances for residues of the insecticides diazinon, parathion, *O,O*-Diethyl *S*-[2-(ethylthio)ethyl] phosphorodithioate (disulfoton), ethoprop, and carbaryl in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on those specified commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above, if prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, EPA independently verifies that the tolerance is no longer needed, or the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In the **Federal Register** of May 24, 1999 (64 FR 27947) (FRL–6083–1), EPA issued a proposed rule to revoke the tolerances listed in this final rule. For tolerance reassessment counting purposes, the number of tolerance revocations stated in the proposed rule of May 24, 1999 and listed in this final rule has been revised by EPA from 29 to 24, to account for maintaining one tolerance for residues of diazinon in/on olives for import purposes and to account for removing 4 berry tolerances (boysenberries and dewberries for diazinon; boysenberries and youngberries for parathion) which are now covered by an existing blackberry tolerance. EPA does not consider the removal of these 4 berry tolerances to be tolerance reassessments because the pesticide residue is still allowed on the commodity. Since diazinon and parathion tolerances not revoked will be part of the organophosphate cumulative risk assessment, these 4 tolerance removals are not yet countable as tolerance reassessments. There are 24 tolerance reassessments counted in this final rule. Also, the May 24, 1999 proposal invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In response to the document published in the **Federal Register** of May 24, 1999, no comments were received by the Agency concerning the pesticides mentioned in this final rule, with the exception of diazinon. Concerning diazinon, the following comment was received:

1. *Diazinon—comment from Novartis*. A comment was received by the Agency from Novartis. Novartis wished to clarify that based on an August 2, 1993, agreement with EPA, diazinon products released for shipment by the registrant after August 31, 1995 could not include the uses listed in this document; and diazinon products sold or distributed after August 31, 1996 could not bear labeling with those uses. In addition, Novartis pointed out that rice was inaccurately listed as a commodity on which diazinon is used. Novartis also noted that in §180.153 of the May 24, 1999 proposed rule, page 27951, ''pineapples'' was inadvertently listed instead of ''pineapples, forage.''

Agency response. The Agency acknowledges that in response to EPA's Data Call-In for Diazinon in 1987 and the 1988 Registration Standard, Novartis (then Ciba-Geigy) notified EPA that they did not intend to support the continued registration of diazinon on the uses listed in this document; and it was

agreed that diazinon products sold or distributed after August 31, 1996 could not bear labeling with these unsupported uses. On December 27, 1996, a **Federal Register** notice (61 FR 68260) (FRL–5577–9) was issued announcing receipt of a request for voluntary deletion of these uses.

In the **Federal Register** on May 24, 1999, in section 180.153, ''pineapples'' was inadvertently listed in the codification text on page 27951 instead of ''pineapples, forage''. However, ''pineapples, forage'' was correctly listed in the preamble on page 27949 as the tolerance proposed for revocation. The tolerance for ''pineapples'' is not revoked; it is still in effect, but the tolerance for ''pineapples, forage'' is revoked because it is no longer considered a significant feed item. In the proposed rule, rice was inadvertently listed as a commodity on which diazinon is used. In reference to the use of diazinon on rice, diazinon in fact does not have registered uses on rice within the United States nor does rice have a tolerance for diazinon.

EPA had proposed to revoke the tolerance for ''olives'' in 40 CFR 180.153 on May 24, 1999, however, because Makhteshim Agan of North America, Incorporated is interested in maintaining the ''olives'' tolerance for import purposes, the Agency will not revoke the tolerance for ''olives'' at this time. Instead, EPA will follow-up on this matter with Makhteshim Agan of North America, Incorporated.

EPA is revoking the tolerances in 40 CFR 180.153(a)(1) for residues of diazinon in or on birdsfoot trefoil; birdsfoot trefoil, hay; grass (NMT 40 ppm shall remain 24 hours after appli); grass, hay; peanuts; peanuts, forage; peanuts, hay; pecans; soybeans; and soybeans, forage; since these uses were voluntarily canceled (61 FR 68260, December 27, 1996). In the rule of May 24, 1999, EPA had proposed an effective date of expiration/revocation for these tolerances as January 1, 2000, but that date has since passed (64 FR 27947). EPA believes that existing stocks have been exhausted and that there has been enough time for all treated commodities to have passed through the channels of trade.

EPA is revoking the tolerances in 40 CFR 180.153(a)(1) for diazinon residues in or on beans, forage; beans, hay; beans, guar, forage; and pineapples, forage; since these commodities are no longer considered significant animal feed items and therefore no longer need tolerances. For general guidance on tolerances for commodities that are no longer considered significant feed items refer to the **Federal Register** December 17, 1997 (62 FR 66020) (FRL–5753–1).

When EPA proposed to revoke the tolerance in 40 CFR 180.153(a)(1) for diazinon residues in or on sugarcane on May 24, 1999 (64 FR 27947), the Agency inadvertently missed an existing FIFRA section 24(c) registration in Louisiana. That FIFRA section 24(c) registration has since been canceled on May 2, 2000 and there continues to be no need for the tolerance. Therefore, EPA is revoking the tolerance in 40 CFR 180.153(a)(1) for sugarcane. Because there have been no active registrations since May 2, 2000, EPA believes that existing stocks have been exhausted.

Also, EPA is removing the tolerances in 40 CFR 180.153(a)(1) for diazinon residues in or on boysenberries and dewberries (0.5 ppm each), since these commodities are now covered by the tolerance for blackberries (also set at 0.5 ppm).

No comments were received by the Agency concerning the following.

2. *Parathion*. Methyl parathion is the methyl homolog of ethyl parathion; ethyl parathion is called parathion in the tolerance listings in 40 CFR 180.121. Tolerances for methyl parathion residues on most crops are included in the (ethyl) parathion tolerances because the enforcement analytical method does not distinguish between the two chemical species. EPA is removing the tolerances in 40 CFR 180.121 for parathion or its methyl homolog residues in or on boysenberries and youngberries (both set at 1 ppm), since these commodities are now covered by the tolerance for blackberries (also set at 1 ppm).

3. *O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate (Disulfoton)*. EPA is revoking the tolerance in 40 CFR 180.183(a)(1) for residues of disulfoton and its cholinesterase-inhibiting metabolites in or on pineapples, foliage because this commodity is no longer considered a significant animal feed item and therefore no longer needs a tolerance.

4. *Ethoprop*. EPA is revoking the tolerances in 40 CFR 180.262 for residues of ethoprop in or on beans, lima, forage; beans, snap, forage; pineapples, fodder; pineapples, forage; sugarcane, fodder; and sugarcane, forage. These commodities are no longer considered significant animal feed items and therefore no longer need tolerances. In 40 CFR 180.262, EPA is also removing the ''(N)'' designation from all entries to conform to current Agency administrative practice (''N'' designation means negligible residues).

5. *Carbaryl*. EPA is revoking the tolerances in 180.169(a)(1) for residues of carbaryl including its hydrolysis product 1-naphthol in or on maple sap and in 40 CFR 180.169(c) for residues of carbaryl in or on avocados. EPA had received a request from the registrant who volunteered to delete those uses from registrations and the Agency agreed to approve the deletions to become effective on December 8, 1997 and authorized the registrant to sell or distribute product under the previously approved labeling for 18 months (62 FR 31816, June 11, 1997) (FRL–5721–2). EPA believes that there are no active registrations for these uses, that all existing stocks are exhausted, and that all treated commodities have passed through the channels of trade. Sections 180.169(a)(1) and 180.169(c) had been redesignated from sections 180.169(a) and 180.169(e), respectively on May 24, 2000 (65 FR 33691) (FRL–6043–1).

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of the final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is October 24, 2001. For this particular final rule, the actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the

channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of May 29, 2001, EPA has reassessed over 3,630 tolerances. In this document, EPA is removing four tolerances and revoking 24 tolerances. Those 24 tolerance revocations are reassessments that are counted toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register** — Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.]

IV. 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–301142 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 24, 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. *Objection/hearing 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–301142, 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).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action; i.e., a tolerance revocation for which extraordinary circumstances do not exist, 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 other 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

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.

VI. 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 11, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 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.

§180.121 [Amended]

2. Section 180.121 is amended by removing from the table in paragraph (a)(1) the entries for boysenberries and youngberries.

§180.153 [Amended]

3. Section 180.153 is amended by removing from the table in paragraph (a)(1) the entries for beans, forage; beans, hay; beans, guar, forage; birdsfoot trefoil; birdsfoot trefoil, hay; boysenberries; dewberries; grass (NMT 40 ppm shall remain 24 hours after appli); grass, hay; peanuts; peanuts, forage; peanuts, hay; pecans; pineapples, forage; soybeans; soybeans, forage; and sugarcane.

§180.169 [Amended]

4. Section 180.169 is amended by removing from the table in paragraph (a)(1) the entry for maple sap, and by removing from the table under paragraph (c) the entry for avocados.

§180.183 [Amended]

5. Section 180.183 is amended by removing from the table in paragraph (a)(1) the entry for pineapples, foliage.

§180.262 [Amended]

6. Section 180.262 is amended by removing from the table in paragraph (a) the entries for beans, lima, forage; beans, snap, forage; pineapples, fodder; pineapples, forage; sugarcane, fodder; and sugarcane, forage; and by removing the ''(N)'' designation from any entry in the table under paragraph (a).

[FR Doc. 01–18651 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPTS–82056; FRL–6783–6]

RIN 2070–AB08

Preliminary Assessment Information Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule addresses the recommendations of the 47th Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) Report by adding 37 indium chemicals and 4 chemicals discussed in the 46th ITC Report (pentachlorothiophenol; tetrachloropyrocatechol; *p*-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-*N*-phenyl-; and benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxoethyl ester) to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The ITC recommendations are given priority consideration by EPA in promulgating TSCA section 4 test rules. This PAIR rule will require manufacturers (including importers) of the 41 substances identified in this document to report certain production, importation, use, and exposure-related information to EPA.

DATES: This rule is effective on August 27, 2001.

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before August 9, 2001, detailed reasons for that belief.

See Unit V. of the **SUPPLEMENTARY INFORMATION** concerning the submission date for those manufacturers required to submit PAIR Forms.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–82056 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Campanella, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; fax number: (202) 401–3672; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in the regulatory text of this document. Entities potentially affected by this action may include, but are not limited to:

Category	SIC codes	NAICS codes	Examples of potentially affected entities
Chemical manufacturers (including importers)	28, 2911	325, 32411	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The Standard Industrial Classification (SIC) codes and 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 any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document and other documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Law and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**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 OPPTS–82056. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

Other than formal requests for removal of a chemical listed in this PAIR rule (see Unit VI.), which must be submitted to EPA on or before August 9, 2001, you may submit comments on this action at any time. Comments, as well as formal requests for removal of chemical substances, can be submitted through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–82056 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–82056. Electronic comments may also be filed online at many Federal Depository Libraries

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives for improvement.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is EPA Taking?

In this document, EPA is issuing a final TSCA section 8(a) PAIR rule for 41 chemicals recommended for testing in the 47th ITC Report to the EPA Administrator published in the **Federal Register** of April 3, 2001 (66 FR 17768) (FRL–6763–6).

III. What is a PAIR Rule?

EPA promulgated the PAIR rule in 40 CFR part 712 under section 8(a) of TSCA (15 U.S.C. 2607(a)). This model section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at § 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the PAIR Form entitled *Manufacturer's Report—Preliminary Assessment Information* (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of ITC *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC Report, EPA may, at the same time and without providing notice and an opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective August 27, 2001.

IV. What Chemicals are to be Added ?

In the 47th ITC Report to EPA, the ITC recommended 41 chemicals. These chemicals are being added to the TSCA section 8(a) PAIR reporting rule.

The regulatory text of this rule lists the 41 chemicals that are being added to the PAIR rule as a result of this document.

V. Who Must Report Under this PAIR Rule?

All persons who manufactured (defined by statute to include import) the 41 chemicals identified in the regulatory text of this document during their latest complete corporate fiscal year must submit a PAIR Form for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in § 712.28 no later than October 24, 2001. Persons who have previously and voluntarily submitted a PAIR Form to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the Form are available from the Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the PAIR Form are also available electronically from the Chemical Testing and Information Gathering Home Page on the Internet at http://www.epa.gov/opptintr/chemtest/.

VI. How is a Chemical Substance Removed From the PAIR Rule?

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before August 9, 2001,

detailed reasons for that belief. EPA, in its discretion, may remove the substance from this rule (see § 712.30(c)). When withdrawing a chemical from the PAIR rule, EPA will publish a final rule amending the PAIR rule in the **Federal Register**.

VII. Public Record

The following documents constitute the public record for this rule under docket control number OPPTS–82056.

1. This final rule.
2. The Economic Analysis for this rule (March 7, 2001).
3. The 46th ITC Report (65 FR 75551, December 1, 2000) (FRL–6594–7)).
4. The 47th ITC Report (66 FR 17768, April 3, 2001) (FRL–6763–6)).

VIII. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. As discussed in Unit III., whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. EPA finds, therefore, that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)(3)(B)) to make these amendments without prior notice and comment.

IX. Economic Analysis

The economic analysis for the addition of the 41 chemicals to the TSCA section 8(a) PAIR rule is entitled *Economic Analysis for the Addition of 41 Chemicals Recommended for Testing in the* 47th *Report of the TSCA Interagency Testing Committee to EPA's Preliminary Assessment Information Reporting (PAIR) Rule* (March 7, 2001) (Economic Analysis).

Only 3 of the 41 chemicals were located in EPA's 1998 or 1994 Chemical Update System (CUS) utilizing the ITC-supplied CAS numbers. Because the threshold for reporting to CUS under the Inventory Update Rule is 10,000 lbs., and the threshold for PAIR reporting is 500 kilograms (kg) (1,100 lbs.), EPA assumed that one manufacturer at one site exists per chemical to account for the possibility that there may be manufacturers producing PAIR-reportable amounts that were not captured by CUS. EPA has no way of ascertaining the validity of this assumption, a fact which highlights the need for PAIR reporting on these chemicals.

Given the assumptions in this unit, the costs and burden associated with this rule are estimated in the Economic Analysis to be the following:

Reporting Costs (dollars)

41 reports estimated at $2,219.42 per report = $90,996.17
Total Cost = $90,996.17
Mean cost per site/firm = $90,996.17/41 sites = $2,219.42/site

Reporting Burden (hours)

Rule familiarization: 7 hours/site x 41 sites = 287 hours
Reporting: 21.42 hours/report x 41 reports = 878.1 hours
Total burden hours = 1,165.1 hours
Average burden per site/firm = 1,165.1 hours/41 sites = 28.4 hours/site

EPA Costs (dollars)

The annual costs to the Federal Government will be approximately 0.1035 Full Time Equivalents (FTEs) (or 215.25 hours annually). At an estimated $85,050 per FTE, the total 0.1035 FTEs ($8,802.68), plus $8,635.01 for data processing, will cost EPA $17,437.69.

X. Regulatory Assessment Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

C. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals recommended in the 47th ITC Report.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity analysis prepared as a part of the Economic Analysis for this rule, and is briefly summarized here. Three of the six firms identified as manufacturers of chemicals affected by this rule met the Small Business Administration definition of a small business, (i.e., having less than 1,000 employees when combined with any corporate parents). Based on the Agency's analysis, the maximum potential impact of this action on an individual firm is estimated to be less than $2,219, regardless of the firm's size. To determine the potential significance of the estimated impact of this action on the small firms, the Agency compared the estimated maximum potential cost with the estimated annual sales revenue for these firms. Based on currently available financial information for these firms, EPA has determined that this action will not result in a significant impact on any of these firms. Information relating to this EPA determination is included in the docket for this rule (OPPTS–82056). Any comments regarding the economic impacts that this action imposes on small entities may be submitted to the Agency at any time after July 26, 2001 using the methods discussed in Unit I.C.

E. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 1,165 hours. Of that total, an estimated 287 hours are spent in an initial review of the rule, and the remaining 878 hours are associated with actual reporting activities (Economic

Analysis). Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary.

F. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian trial governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either. Nor will this action 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).

G. National Technology Transfer and Advancement Act

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). Section 12(d) of NTTAA 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. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

H. Executive Order 12988

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, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

I. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this 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.

J. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

XI. 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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of August 27, 2001. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit VIII. EPA will submit a report containing this 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 the rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: July 10, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. In § 712.30, the table in paragraph (d) is amended by adding the chemicals: Pentachlorothiophenol; tetrachloropyrocatechol; *p*-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-*N*-phenyl-; and benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxoethyl ester in ascending numeric CAS number order to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(d) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * *	* * *	
133–49–3	Pentachlorothiophenol	8/27/01	10/24/01
	* * * *	* * *	
1198–55–6	Tetrachloropyrocatechol	8/27/01	10/24/01
1806–24–2	*p*-toluidine, 5-chloro-.alpha.,.alpha.,.alpha.-trifluoro-2-nitro-*N*-phenyl-	8/27/01	10/24/01
	* * * *	* * *	
88185–22–2	Benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-, 2-ethoxy-1-methyl-2-oxoethyl ester.	8/27/01	10/24/01

* * * * *

3. In § 712.30, the table in paragraph (e) is amended by adding in alphabetical order the category ''Indium Chemicals'' containing 37 chemicals in ascending numeric CAS number order to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(e) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * *	* * *	
Indium Chemicals:			
923–34–2	Triethylindium	8/27/01	10/24/01
1303–11–3	Indium arsenide	8/27/01	10/24/01
1312–41–0	Indium antimonide	8/27/01	10/24/01
1312–43–2	Indium (III) oxide	8/27/01	10/24/01
1312–45–4	Indium (III) telluride	8/27/01	10/24/01
4194–69–8	Indium (III) citrate	8/27/01	10/24/01
7440–74–6	Indium	8/27/01	10/24/01
7783–52–0	Indium (III) fluoride	8/27/01	10/24/01
10025–82–8	Indium (III) chloride	8/27/01	10/24/01
12018–95–0	Copper indium diselenide	8/27/01	10/24/01
12030–14–7	Indium (II) sulfide	8/27/01	10/24/01
12030–24–9	Indium (III) sulfide	8/27/01	10/24/01
12056–07–4	Indium selenide	8/27/01	10/24/01
12672–70–7	Indium chloride	8/27/01	10/24/01
12672–71–8	Indium oxide	8/27/01	10/24/01
13464–82–9	Indium (III) sulfate	8/27/01	10/24/01
13465–09–3	Indium (III) bromide	8/27/01	10/24/01
13465–10–6	Indium (I) chloride	8/27/01	10/24/01
13510–35–5	Indium (III) iodide	8/27/01	10/24/01
13709–93–8	Indium (III) borate	8/27/01	10/24/01
13770–61–1	Indium (III) nitrate	8/27/01	10/24/01
13966–94–4	Indium (I) iodide	8/27/01	10/24/01
14166–78–0	Indium (III) fluoride	8/27/01	10/24/01
14280–53–6	Indium (I) bromide	8/27/01	10/24/01
14405–45–9	Indium tris(acetylacetonate)	8/27/01	10/24/01
20661–21–6	Indium (III) hydroxide	8/27/01	10/24/01
22398–80–7	Indium (I) phosphide	8/27/01	10/24/01
25114–58–3	Indium (III) acetate	8/27/01	10/24/01
25617–98–5	Indium nitride	8/27/01	10/24/01
27765–48–6	Indium (III) tetrafluoroborate	8/27/01	10/24/01

CAS No.	Substance	Effective date	Reporting date
50926–11–9	Indium tin oxide	8/27/01	10/24/01
55326–87–9	Indium hydroxide	8/27/01	10/24/01
66027–93–8	Indium (III) sulfamate	8/27/01	10/24/01
66027–94–9	Hydroxybis(trifluoroacetato-*O*)indium	8/27/01	10/24/01
67816–06–2	Indium (III) 2-ethylhexanoate	8/27/01	10/24/01
68310–35–0	Indium (III) neodecanoate	8/27/01	10/24/01
71243–84–0	Indium tin oxide ($In_{1.69}Sn_{0.1502}O_{2.85}$)	8/27/01	10/24/01

* * * * * *

[FR Doc. 01–18653 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 66, No. 144
Thursday, July 26, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–62–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75 and RB211–22B–02 series turbofan engines. This proposal would require inspection of certain high pressure (HP) turbine disks, manufactured between 1989 and 1999, for cracks in the rim cooling air holes, and, if necessary, replacement with serviceable parts. This proposal is prompted by reports of cracks in two high life Trent 800 disk rim cooling air holes produced at the same manufacturing facility using the same tooling as the RB211series turbofan engine HP turbine disks. The actions specified by the proposed AD are intended to prevent possible disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by September 24, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–62–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–62–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–62–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on certain Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 series turbofan engines. The CAA received reports of cracks in two Trent 800 high life HP turbine disks rim cooling air holes. Examination of the affected holes revealed smearing of the surface indicating machining damage during manufacture. Since the RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 HP turbine disks are similar in design to the Trent 800 disk and are produced at the same manufacturing facility utilizing the same tooling, it is likely that similar machining damage exists on RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 disks. The existence of similar damage in these disks could result in disk failure if the component was operated to the currently declared lives without inspection of the disk rim cooling air holes. The RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 engines operate significantly higher, HPT disk lives than the Trent 800. As such, the Trent 800 is not subject to the same potential for disk failure identified in this proposed AD for the RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 engines. Therefore, the Trent 800 engine is not included in this proposed AD.

Manufacturer's Service Information

Rolls-Royce has issued Service Bulletin (SB) No. RB.211–72–C817, Revision 2, dated March 7, 2001, and SB No. RB.211–72–C877, Revision 1, dated March 7, 2001, that specify procedures for inspection of the HP turbine disk cooling air holes for cracks and provide

rejection criteria. The CAA classified these SB's as mandatory and issued airworthiness directives (AD) 003–12–99 and 004–01–2000 in order to ensure the airworthiness of these engines in the UK.

Bilateral Agreement Information

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

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, RB211–535E4–B–75, and RB211–22B–02 series turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require inspection of certain HPturbine disks, manufactured between 1989 and 1999, for cracks in the rim cooling air holes, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the mandatory service bulletins described previously.

Economic Impact

There are approximately 549 engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. No parts are required. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $72,000.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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:

Rolls-Royce plc: Docket No. 2000–NE–62–AD.

Applicability: Rolls-Royce plc (RR) RB211–535E4–37 and RB211–535E4–B–37 series turbofan engines, with the following high pressure (HP) turbine disks installed: part number (P/N) UL10323, with serial numbers (S/N) CQDY6070 and higher; P/N UL27680, with any serial number; and P/N UL27681, with any serial number. RR RB211–535C–37 series turbofan engines, with the following HP turbine disks installed: P/N LK80622, with S/N LQDY6316 and higher; P/N LK80623, with S/N CDQY5945 and higher; and P/N UL28267, with any serial number. RR RB211–535E4–B–75 series turbofan engines with the following HP turbine disks installed: P/N UL10323, with S/N CDQY6070 and higher; and P/N UL27680, with any serial number. RR RB211–22B–02 series turbofan engines with the following HP turbine disks installed: P/N LK80622, with S/N LQDY6316 and higher; P/N LK80623, with S/N CDQY5945 and higher; and P/N UL28267, having any serial number. These engines are installed on but not limited to Boeing 757, Tupolev Tu204 and Lockheed L–1011 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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: Compliance with this AD is required as indicated, unless already done.

To prevent possible high pressure (HP) turbine disk failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspection for All Except RB211–22B–02 Series

(a) For RB211–535E4–37, RB211–535E4–B–37, RB211–535C–37, and RB211–535E4–B–75 series engines, conduct a one-time inspection of the HP turbine disks identified in Section A. (1) and (2), of RR SB No. RB.211–72–C817, Revision 2, dated March 7, 2001, for cracks on the rear face of the cooling air holes.

(1) For disk life at or below 13,700 cycles on the effective date of this AD, inspect at the earlier of the following :

(i) At the next shop visit when the HP turbine blades have been removed from the disk; *or*

(ii) Prior to exceeding 14,500 cycles-in-service (CIS) since new.

(2) For disk life above 13,700 cycles on the effective date of this AD, inspect at the earliest of the following:

(i) Prior to reaching 15,300 CIS since new; *or*

(ii) Within 800 cycles after the effective date of this AD; *or*

(iii) At the next shop visit when the HP turbine blades have been removed from the disk.

(3) Inspect the HP turbine disk for cracks on the rear face of the cooling air holes in accordance with the Accomplishment Instructions, Section 3 of RR SB No. RB.211–72–C817, dated December 14, 1999; RR SB No. RB.211–72–C817, Revision 1, dated January 24, 2000; or RR SB No. RB.211–72–C817, Revision 2, dated March 7, 2001.

(4) Replace any cracked HP turbine disk with a serviceable part.

Inspections for RB211–22B–02 Series

(b) For RB211–22B–02 series engines, conduct a one-time inspection of the HP turbine disks identified in Section A. of RR SB No.RB.211–72–C877, Revision 1, dated March 7, 2001, for cracks on the rear face of the cooling air holes.

(1) For disk life at or below 11,000 CIS on the effective date of this AD, inspect at the earlier of the following:

(i) At the next shop visit when the HP turbine blades have been removed from the disk; *or*

(ii) Prior to exceeding 11,000 CIS since new.

(2) HP turbine disks with more than 11,000 CIS on the effective date of this AD must be inspected within 300 CIS after the effective date of this AD.

(3) Inspect the HP turbine disk for cracks on the rear face of the cooling air holes in accordance with the Accomplishment Instructions outlined in Section 3 of RR SB No. RB.211–72–C877, dated January 29, 2000, or RR SB No. RB.211–72–C877, Revision 1, dated March 7, 2001.

(4) Replace any cracked HP turbine disk with a serviceable part.

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, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Ferry Flights

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

Note 3: The subject of this AD is addressed in Civil Aviation Authority (CAA) Airworthiness Directives 003–12–99 and 004–01–2000.

Issued in Burlington, Massachusetts, on July 16, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–18554 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF53

Collection of Supplemental Security Income Overpayments From Special Benefits for Certain World War II Veterans

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: We propose to revise our regulations dealing with the recovery of overpayments under the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). The proposed revisions would modify our regulations to permit SSA to recover SSI overpayments by adjusting the amount of Special Benefits for Certain World War II Veterans (SVB) payable under title VIII of the Act. This collection practice would be limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or any State supplementary payments that we administer under title XVI. Also, the amount of SVB to be withheld in a month to recover the SSI overpayment would not exceed 10 percent unless the overpaid person requests us to withhold a different amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the SSI overpayment. If there were willful misrepresentation or concealment, the entire SVB amount will be withheld to recover the SSI overpayment. These revisions would permit SSA to recover SSI overpayments from SVB payable to the overpaid individual when SSI cash benefits are not payable.

DATES: To be sure your comments are considered, we must receive them no later than September 24, 2001.

ADDRESSES: Give us your comments using our Internet site facility (i.e., Social Security Online) at *http://www.ssa.gov/regulations/*. Comments could also be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703, sent by telefax to (410) 966–2830, sent by e-mail to *regulations@ssa.gov* or delivered to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–7183 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: On December 14, 1999, Pub. L. 106–169, the ''Foster Care Independence Act of 1999'' was enacted. Section 251(a) of Pub. L. 106–169 added title VIII to the Social Security Act, establishing a new benefit program—Special Benefits for Certain World War II Veterans. Under this program, certain World War II veterans who were eligible for SSI for December 1999 and for the month of application for SVB, and who meet other criteria specified in the law, may be entitled to SVB for each month in which they reside outside the United States.

Section 251(b) of Pub. L. 106–169 amended section 1147 of the Act. Prior to the enactment of Pub. L. 106–169, section 1147 of the Act (added by section 8 of Pub. L. 105–306) allowed SSA to recover SSI overpayments from an overpaid individual who was no longer receiving SSI cash payments by reducing the amount of any benefits payable under title II of the Act. Section 251(b) of Pub. L. 106–169 amended section 1147 to allow recovery of SSI overpayments from title VIII benefits, as well as title II benefits, payable in a month. Throughout this preamble, this type of overpayment recovery is called ''cross-program recovery.'' With certain exceptions, the amount of the reduction permitted under cross-program recovery cannot exceed 10 percent of the benefits payable in a month.

Explanation of Proposed Changes

We are publishing elsewhere in today's **Federal Register** final rules that establish cross-program recovery of title XVI benefits from title II benefits payable to the overpaid person in a month (which were published as proposed rules on October 5, 2000 at 65 FR 58970). We propose to revise §§ 416.570 and 416.572, as set forth in these final rules, to address cross-program recovery of title XVI overpayments from SVB payable to the overpaid person in a month. We describe below the specific changes we propose to make in §§ 416.570 and 416.572.

In order to implement cross-program recovery from SVB, we would modify several provisions of § 416.572. Paragraph (a) would be revised as follows:

- We would revise the definition of ''cross-program recovery'' to include the process of collecting title XVI overpayments from SVB payable in a month to the overpaid individual.
- We would revise the definition of ''benefits payable in a month'' to include the amount of SVB a person would actually receive in a given month. Under our proposed definition, ''benefits payable in a month'' would include the monthly SVB amount and any past due SVB a person would receive, but would not include the amount of the reduction for benefit income required by section 805 of the Act (42 U.S.C. 1005). We would add to the definition an example to show how we would determine SVB payable in a month.

We would revise paragraph (b) of § 416.572 to explain that we may use cross-program recovery to collect title XVI overpayments if the overpaid person is not currently receiving SSI cash benefits and is receiving benefits under title II or title VIII of the Act. Consequently, if a person whose title II and/or title VIII benefits are being adjusted to recover a title XVI overpayment again becomes eligible for SSI benefits, cross-program recovery would end with the month in which SSI cash benefits resume. We would begin collecting the remaining title XVI overpayment by monthly adjustment of SSI payments. We would also revise paragraph (b) to explain that:

- We would not start cross-program recovery from SVB if we already are adjusting SVB to recover an SVB overpayment, and
- We would not start cross-program recovery from title II benefits if we are already adjusting title II benefits to recover an SVB or title II overpayment.

Adjustment of title VIII and title II benefits to recover SVB overpayments is authorized by section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

Paragraph (c) of § 416.572 lists the information that we would include in the notice sent to a person whose benefits would be subject to cross-program recovery. Paragraph (c)(2) requires that we include the specific amount we would withhold from title II benefits payable in a month to recover the title XVI overpayment. We would revise paragraph (c)(2) to add that the information would include the amount we would withhold from SVB payable in a month. The notice would state that the person may ask us to review our determination that he or she still owes the overpayment balance and that he or she may ask us to waive collection of the overpayment balance. The notice will also inform the individual how to request a waiver. Unless the overpaid person or that person's spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice would also state that the person may request that we withhold from SVB a different amount than the amount stated in the notice.

Paragraph (d) of § 416.572 explains that we would begin to withhold no sooner than 30 days after the date of the notice. If the individual would pay the entire overpayment balance within that 30-day period, we would not impose cross-program recovery. If within the 30-day period the person asks us to review the determination that he or she still owes us the overpayment balance and/or requests us to waive recovery of the overpayment balance, we would not begin cross-program recovery until we review the matter(s) and notify the person of our decision(s). If within the 30-day period, the person requests that we withhold a different amount, we would not begin cross-program recovery until we determine the amount we would withhold. These provisions would apply when we would pursue cross-program recovery to collect SSI overpayments from SVB payable under title VIII of the Act.

We would revise paragraph (e) of § 416.572 to explain that when cross-program recovery is applied, we would collect the overpayment at a rate of 10 percent of the title II benefits and SVB payable in any month, respectively. However, we would collect at a rate of 100 percent of the title II benefits and SVB payable in any month if the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment.

Other Revisions

We would revise the language of § 416.570 to state that we would not adjust title XVI benefits to recover SVB overpayments without a specific request from the SSI beneficiary. Without the consent of the overpaid person, we have no authority to recover SVB overpayments from SSI payments.

Clarity of This Regulation

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (i.e., Social Security Online): http://www.ssa.gov/.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, the regulations were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The estimated program savings from increased collections as a result of implementation of section 251(b)(7) of Pub. L. 106–169 are negligible, less than $2.5 million over the next 10 years. The administrative impact is also negligible.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 7, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend Chapter III of Title 20, Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED (PRIVATE)

1. The authority citation for Subpart E of Part 416 is amended to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

2. Section 416.570 is amended by revising the third sentence to read:

§ 416.570 Adjustment-general rule.

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II, title VIII or title XVIII of the Act will be recovered by adjusting SSI benefits.

* * * * *

3. Section 416.572 is amended by revising the heading and paragraphs (a), (b), (c)(2), and (e) to read as follows:

§ 416.572 Are title II benefits and title VIII benefits subject to adjustment to recover title XVI overpayments?

(a) *Definitions*—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you in a month under title II and title VIII of the Act.

(2) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the amount of title II or title VIII benefits that you would actually receive in that month. For title II benefits, it includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title VIII benefits, it includes your monthly benefit and any past due benefits after any reduction by the amount of income for the month required by section 805 of the Act.

Title II Example: A person is entitled to monthly title II benefits of $1000. The first benefit payment the person would receive includes past-due benefits of $1000. The amount of benefits payable in that month for purposes of cross-program recovery is $2000. So, if we were recovering 10 percent of that month's benefit, we would be recovering $200. The monthly benefit payable for subsequent months is $1000. So, if we were recovering 10 percent of that amount, we would be recovering $100. If $200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in §§ 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be $800. So, if we were recovering 10 percent of that month's benefit, we would be recovering $80.

Title VIII Example: A person qualifies for monthly title VIII benefits of $384. The person is receiving a monthly pension payment of $150 from his employer. The title VIII benefit payable in a particular month would be reduced by $150 under section 805 of the Act (42 U.S.C. 1005). The title VIII benefit payable and subject to withholding in that month for purposes of cross-program recovery would be $234. So, if we were recovering 10 percent of that month's benefit, we would be recovering $23.40.

(3) *Not currently eligible for SSI cash benefits.* This means that a person is not receiving any cash payment, including State supplementary payments, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93–66.

(b) *When we may collect title XVI overpayments using cross-program recovery.* (1) Except as provided in paragraphs (b)(2) through (4) of this section, we may use cross-program recovery to collect a title XVI overpayment you owe if:

(i) You are not currently eligible for SSI cash benefits, and

(ii) You are receiving title II or title VIII benefits.

(2) We will not start cross-program recovery against your title II or title VIII benefits if you are refunding your title XVI overpayment by regular monthly installments.

(3) We will not start cross-program recovery against your title II benefits if we are adjusting your title II benefits to recover a title II overpayment under § 404.502 of this chapter or a title VIII overpayment under section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

(4) We will not start cross-program recovery against your title VIII benefits if we are adjusting your title VIII benefits to recover a title VIII overpayment under section 808(a)(1) of the Act (42 U.S.C. 1008(a)(1)).

(c) * * *

(2) We will withhold a specific amount from the title II benefits and/or title VIII benefits payable to you in a month (see paragraph (e) of this section);

* * * * *

(e) *Rate of withholding.* (1) We will collect the overpayment at the rate of 10 percent of the title II benefits and title VIII benefits payable to you in any month, unless:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(2) In determining whether to grant your request that we withhold at a lower rate than 10 percent of the title II benefits payable in a month, we will use the criteria applied under *§ 416.571 to similar requests about withholding from title XVI benefits.*

(3) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment at the rate of 100 percent of the title II benefits and title VIII benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

[FR Doc. 01–18593 Filed 7–25–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–C–02]

Indian Housing Block Grant Allocation Formula; Notice of Intent To Establish a Negotiated Rulemaking Committee and Request for Nominations; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction.

SUMMARY: On July 16, 2001, HUD published a notice announcing its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. The establishment of the committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG Program. The July 16, 2001 notice contained a typographical error regarding the tentative date and locale of the first negotiated rulemaking committee meeting. The purpose of this document is to make the necessary correction and to advise the public that, at this time, HUD has not yet determined the date or location of the first committee meeting.

DATES: *Comment Due Date:* The comment due date announced in the July 16, 2001 notice remains unchanged. Comments on the July 16, 2001 notice are due on or before August 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding the Committee and its proposed members to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and

copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Office Public and Indian Housing, Department of Housing and Urban Development, Room 4126, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 401–7914 (this number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2001 (66 FR 37098), HUD published a notice announcing its intent to establish a negotiated rulemaking committee for the purpose of negotiating a proposed rule that would revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. The establishment of the committee will offer Indian tribal governments the opportunity to have input into any changes determined to be necessary to improve the distribution of funds under the IHBG Program. Section IV. of the July 16, 2001 notice (entitled ''Tentative Schedule'') contained a typographical error regarding the tentative date and locale of the first negotiated rulemaking committee meeting. Specifically, the notice contained a notation to insert the approximate date and location of the meeting, but did not provide the necessary information. The purpose of this document is to make the necessary correction.

At this time, HUD has not yet determined the date or location of the first committee meeting. Once determined, HUD will provide advance notice of the meeting through **Federal Register** notice. All meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided the opportunity to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. In the event that the date and time of these meetings are changed, HUD will advise the public through **Federal Register** notice.

Dated: July 20, 2001.

Paula O. Blunt,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–18599 Filed 7–25–01; 8:45 am]

BILLING CODE 4210–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7012–8]

Clean Air Act Full Approval of Operating Permits Program in Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the operating permits program submitted by the State of Alaska. Alaska's operating permits program was submitted in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. In the Final Rules section of this **Federal Register**, EPA is approving the Alaska operating permits program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by August 27, 2001.

ADDRESSES: Written comments should be addressed to Denise Baker, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of Alaska's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 3, 2001.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01–18406 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket OR–01–005b; FRL–7018–7]

Finding of Attainment for PM–10; Oakridge, Oregon, PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Oakridge nonattainment area in Oregon has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 1999.

In the Final Rules section of this **Federal Register**, the EPA is publishing its determination as a direct final rule without prior proposal because the Agency views this as a noncontroversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 27, 2001.

ADDRESSES: Written comments should be addressed to, Steven K. Body, (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of air quaity data and other relevent information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–18649 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket OR–01–004b; FRL–7018–4]

Finding of Attainment for PM–10; Lakeview, Oregon, PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Lakeview nonattainment area in Oregon has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 1999.

In the Final Rules section of this **Federal Register**, the EPA is publishing its determination as a direct final rule without prior proposal because the Agency views this as a noncontroversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 27, 2001.

ADDRESSES: Written comments should be addressed to, Steven K. Body, (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of air quaity data and other relevent information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality (OAQ–107), Seattle, Washington, (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–18647 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 140

[FRL–7018–3]

Marine Sanitation Devices (MSDs); Proposed Regulation to Establish a No Discharge Zone (NDZ) for State Waters within the Boundaries of the Florida Keys National Marine Sanctuary (FKNMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish a NDZ for State waters within the boundaries of the FKNMS pursuant to section 312 (f)(4)(A) of the Clean Water Act. This action is being taken in response to an October 27, 1999 resolution passed by the FKNMS Water Quality Protection Program Steering Committee and a December 8, 1999 resolution of the Board of County Commissioners of Monroe County, Florida to establish a NDZ area for State waters within the FKNMS, which led to a December 7, 2000 letter from the Governor of Florida requesting this action. A map which delineates the area to be designated can be obtained or viewed by accessing the FKNMS's Web site at ''http://www.fknms.nos.noaa.gov/'', by calling the Sanctuary office at (305) 743–2437, or by writing to the Sanctuary Superintendent at P.O. Box 500368, Marathon, Florida, 33050. It should also be noted that the National Oceanic and Atmospheric Administration (NOAA) plans to pursue NDZ status for Federal waters within the FKNMS in the near future. Currently, there are about 30 pump out facilities located throughout the Florida Keys. To obtain a list of these facilities you may contact George Garrett, Director of Marine Resources for Monroe County, at (305) 289–2507, E-mail at *garrettg@mail.state.fl.us*, or by writing to Monroe County Service Center, 2798 Overseas Highway, Suite 420, Marathon, Florida, 33050–2227.

DATES: Comments must be submitted to EPA on or before August 27, 2001.

ADDRESSES: Written comments or requests for information may be submitted to Wesley B. Crum, Chief, Coastal and NonPoint Source Programs, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia, 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background

The Florida Keys are a national treasure of international acclaim that contain unique environments and possess high value to humans when properly conserved. Adjacent to the Florida Keys land mass are located spectacular, unique nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values. These marine environments are the maritime equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities. The economy of the Florida Keys is based in large part on tourism and fisheries that are directly tied to the ecological resources and quality of the waters surrounding the Florida Keys. In recognition of this, Congress created the FKNMS with the signing of H.R. 5905 (Public Law 101–605, the FKNMS and Protection Act) on November 16, 1990. The purpose of a marine sanctuary is to protect resources and their conservation, recreational, ecological, historical, research, educational, or aesthetic values through comprehensive long-term management. The mission of the National Marine Sanctuary Program is to identify, designate, and comprehensively manage marine areas of national significance. National Marine Sanctuaries are established for the public's long-term benefit, use, and enjoyment. Congress also recognized the critical role of water quality in maintaining the ecological resources of the Florida Keys, and directed the U.S. EPA and the State of Florida to develop a Water Quality Protection Program (WQPP) for the Sanctuary. The WQPP was finalized in September 1996 and implementation of the numerous recommended actions within the WQPP is ongoing.

The State of Florida recognized the importance of good water quality to ecosystem structure and function and declared the waters surrounding the Florida Keys as ''Outstanding Florida Waters'' or OFW in 1985. Florida Statute grants the Florida Department of Environmental Protection the power to establish rules that provide for the category of water bodies called OFW, which are worthy of special protection because of their natural attributes. No degradation of water quality is allowed in OFW. In addition, the Florida Keys have been designated as an ''Area of Critical State Concern''. The objective of this program is to provide another level of legislative review for development plans within areas where unique and fragile natural resources exist and local protection may be lacking. ''Areas of Critical State Concern'' are declared where there is a perceived need to protect public resources from risk by unregulated or inadequately regulated development. Further, the pristine and unique habitats of the Florida Keys have led to the establishment of special protection areas by the Federal government, including the Key West Wildlife Refuge and the Great White Heron Wildlife Refuge. These actions are further evidence of the importance of the Florida Keys and their unique natural resources.

The purpose of the WQPP is to recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the FKNMS. This includes restoration and maintenance of a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreational activities in and on the water. NOAA's Final Management Plan/Environmental Impact Statement for the FKNMS became effective on July 1, 1997 and includes the WQPP. The Monroe County Board of County Commissioners and the State of Florida recognize and support this document.

There is a large community in the Florida Keys that live on boats and many live-aboard vessels are permanently anchored in harbors and are not capable of movement. Transient vessels also anchor in harbors and other protected sites and are very numerous in winter months. The number of live-aboard vessels has increased dramatically in recent years. While the Clean Vessel Act prohibits the dumping of raw sewage, treated wastewater from vessels may be discharged into State waters. Wastewater treatment (disinfection) by Type I and II MSDs does not remove all nutrients from wastewater. Many live-aboard and transient vessels discharge wastewater into surface waters. It is estimated that nutrients from vessel wastewater account for about 2.8% of nitrogen and 3.0% of phosphorus loadings into nearshore waters of the Florida Keys (U.S. EPA, 1993, Phase II Report). Nutrient loadings from vessels may be relatively minor contributions to total Keys-wide loadings. However, loadings from vessels are a significant source of nutrients to harbors and result in eutrophication of waters that typically exhibit poor circulation/flushing. Violations of fecal coliform standards are common in marinas and harbors throughout the Florida Keys (Florida Department of Environmental Regulation 1987, 1990).

The WQPP Phase II Report (1993) and other studies have determined that discharges of wastewater from vessels are degrading water quality in nearshore and confined waters. The final WQPP document (1996) identified the need to eliminate sewage discharges from live-aboard vessels and other vessels as a high priority action item. The State of Florida, as requested by the City of Key West, recently determined that the protection and enhancement of the quality of waters surrounding the City of Key West require greater environmental protection. This action prohibits the discharge from all vessels of any sewage, whether treated or not, into such waters out to a distance of 600 feet from shore. The U.S. EPA, pursuant to section 312(f)(3) of the Clean Water Act (Public Law 92–500), recently (August 25, 1999) concurred with the State's determination that adequate pumpout facilities for safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters surrounding the City of Key West.

The Board of County Commissioners of Monroe County, Florida has for some time been concerned about water quality in the Florida Keys. Monroe County's Comprehensive Plan is very strongly predicated upon environmental protection and water quality issues and the associated Executive Order and Work Program adopted by the Florida Governor and Cabinet are geared toward assisting Monroe County with improving and protecting water quality. The Board of County Commissioners of Monroe County has adopted a resolution requesting that the Governor of the State of Florida petition the EPA to declare all waters of the State within the boundaries of the FKNMS to be a NDZ for sewage, whether treated or not, from all vessels. Monroe County believes that this action would be a major step in protecting water quality around the Keys and especially in those areas where there is a high concentration of vessels. The NDZ designation is fully supported by the WQPP Steering Committee and is consistent with the overall goals of the WQPP for the FKNMS. This designation is also consistent with Florida's Area of Critical State Concern Program and the Principles for Guiding Development for the Florida Keys. The Governor of the State of Florida supports Monroe County's request to designate all State waters located within the FKNMS as a NDZ and has submitted the County's request to EPA Region 4 for consideration.

Section 312(f)(4)(a) states: ''If the EPA Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall, by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.'' This authority has now been delegated to EPA Regional Administrators. On December 7, 2000, the Governor of Florida, Jeb Bush, requested that EPA Region 4 establish the NDZ status for State waters within the FKNMS. The EPA Region 4 Administrator concurs with this request.

II. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. This Order defines ''significantly regulatory action'' as 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 or entitlement, 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.

EPA, in consultation with local and State government officials, has

determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132

The State of Florida is requesting that EPA take action to designate State waters within the FKNMS as a NDZ. Therefore, this order does not apply.

C. Executive Order 13175

This order pertains to compliance costs of this rule to tribes. There are no tribal lands within the boundaries of the FKNMS. Therefore, this order does not apply.

D. Executive Order 13045

This order authorizes EPA the discretion to consider health or safety risks (especially for children) when making regulatory determinations. The net result of this action will be to improve environmental conditions within the FKNMS.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.* whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the proposed action will have any significant effect on any small entities. An abbreviated IRFA can be prepared depending on the severity of the economic impact and relevant statute's allowance of alternatives. After considering the economic impacts of this proposed regulation/rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as we minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by OMB. Since today's rule would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

G. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statute is required for EPA rules under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must consider that alternative, unless the Administrator explains otherwise in the final rule. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them opportunity for meaningful and timely input during the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them of compliance with the regulatory requirements.

EPA, in consultation with local and State government officials, has determined that this rule does not include a Federal mandate that will result in estimated annualized costs of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with MSDs and that navigate throughout the FKNMS are already subject to the EPA MSD Standard at 40 CFR part 140 and the U.S. Coast Guard MSD Standard at 33 CFR part 159. These standards prohibit the overboard discharge of untreated vessel sewage in State waters in the FKNMS and require that vessels with on-board toilets shall have U.S. Coast Guard certified MSDs which either retain sewage or treat sewage to the applicable standards. There are 3 types of MSDs certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this proposed rule. Those vessels affected by this rule will either retain and pump out treated sewage or discharge outside of the designated NDZ. Any costs associated with those activities is minimal and it is therefore estimated that the annualized costs to State or tribal governments in the aggregate, or to the private sector, will not exceed $100 million.

Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is also not subject to the requirements of section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

Lists of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: July 16, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Title 40, Chapter 1, Part 140 of the Code of Federal Regulations is amended as follows:

PART 140—[AMENDED]

1. The authority citation for part 140 continues to read as follows:

Authority: 33 U.S.C. 1322

2. Section 140.4 is amended by adding paragraph (b)(1)(ii) to read as follows:

§ 140.4 Complete prohibition.

* * * * *

(b) * * *

(ii) Waters of the State of Florida within the boundaries of the Florida Keys National Marine Sanctuary as delineated on a map of the Sanctuary at ''http://www.fknms.nos.noaa.gov/''.

* * * * *

[FR Doc. 01–18650 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7003–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also ''the Agency'' or ''we'' in this preamble) is proposing to modify an exclusion (or ''delisting'') from the lists of hazardous waste, previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS) in Morrisville, Pennsylvania. This action responds to a petition for amendment submitted by GROWS to increase the maximum annual volume covered by its current exclusion.

The Agency is basing its tentative decision to grant the petition for amendment on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would increase the annual volume of waste conditionally excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed amendment. We will accept comments on this proposal until September 10, 2001. Comments postmarked after the close of the comment period will be stamped ''late.'' These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition for amendment by filing a request by August 10, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Your request for a hearing should be addressed to James J. Burke, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for your viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Please call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, please contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Laws and Regulations Give EPA the Authority To Delist Waste?
B. What Is Currently Delisted At GROWS?
C. What Does GROWS Request in Its Petition For Amendment?
II. Disposition of Petition Amendment
A. What Information Did GROWS Submit To Support Its Petition For Amendment?
B. What Method Did EPA Use To Evaluate Risk?
1. How did EPA evaluate risk when it reviewed the 1986 GROWS' petition?
2. How did EPA evaluate risk for this proposed amendment?
C. What Conclusion Did EPA Reach?
III. Conditions for Exclusion
A. What Are the Maximum Allowable Concentrations of Hazardous Constituents?
B. How Frequently Must GROWS Test the Waste and How Must It Be Managed Until It Is Disposed?
C. What Must GROWS Do If the Process Changes?
D. What Data Must GROWS Submit?
E. What Happens If GROWS Fails To Meet the Conditions of the Exclusion?
IV. Effect on State Authorization
V. Effective Date
VI. Administrative Requirements

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure which allows a person to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste, and should, therefore, be delisted.

According to 40 CFR 260.22(a)(1), in order to have these wastes excluded a petitioner must first show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. The criteria which we use to list wastes are found in 40 CFR 261.11. An explanation of how these criteria apply to a particular waste is contained in the background document for that listed waste.

In addition to the criteria that we considered when we originally listed the waste, we are also required by the provisions of 40 CFR 260.22(a)(2) to consider any other factors (including additional constituents), if there is a reasonable basis to believe that these factors could cause the waste to be hazardous.

In a delisting petition, the petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels.

A generator remains obligated under RCRA to confirm that its waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 even if EPA has delisted its waste.

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively.) These wastes are also eligible for exclusion but remain hazardous wastes until delisted.

B. What Is Currently Delisted at GROWS?

GROWS operates a commercial landfill and wastewater treatment plant in Morrisville, Pennsylvania. On November 13, 1986, GROWS petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude from hazardous waste regulation a wastewater treatment sludge filter cake derived from the treatment of landfill leachate. This leachate originates, in part, from its closed landfill containing a mixture of solid wastes and hazardous wastes. The wastewater treatment plant also treats non-hazardous leachate from non-hazardous waste landfills.

In support of its petition, GROWS submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that

no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of these wastes and the Agency's evaluation of the 1986 GROWS' petition are contained in the Proposed Rule and Request for Comments published in the **Federal Register** on September 17, 1990 (55 FR 38090).

After evaluating public comment on the Proposed Rule, we published a final decision in the **Federal Register** on August 20, 1991, (56 FR 41286) to exclude GROWS' wastewater treatment sludge filter cake derived from the treatment of EPA Hazardous Waste No. F039 (multi-source leachate) from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 1991 was conditioned on the volume of waste identified in the 1986 GROWS' petition. Specifically, the exclusion granted by EPA is limited to a maximum annual volume of 1000 cubic yards. Any additional waste volume in excess of this limit generated by GROWS in a calendar year was to have been managed as hazardous waste.

C. What Does GROWS Request in Its Petition for Amendment?

As a result of an increase in wastewater treatment sludge filter cake production associated with an increase in the efficiency of the wastewater treatment operation, GROWS petitioned EPA on June 12, 2000 for an amendment to its August 20, 1991 final exclusion. In its petition, GROWS requested an increase in the maximum annual waste volume that is covered by its exclusion from 1000 cubic yards to 2000 cubic yards.

II. Disposition of Petition Amendment

A. What Information Did GROWS Submit To Support its Petition for Amendment?

The exclusion which we granted to GROWS on August 20, 1991, is a conditional exclusion. In order for its exclusion to remain effective, GROWS must verify that its waste meets prescribed delisting levels. Prior to disposal, GROWS is required to sample each batch of waste generated over a four week period. Samples must be analyzed for a list of verification constituents. If the concentration of any verification constituent exceeds its respective maximum allowable concentration, the batch must either be retreated until it meets these levels, or managed and disposed of as a hazardous waste in accordance with Subtitle C of RCRA.

In order to support its Petition For Amendment, GROWS submitted its verification testing results from the past two years to EPA. This submission consisted of the results of twenty-seven (27) analyses conducted on samples collected for the time period from December 15, 1997, until December 10, 1999.

The verification testing program prescribed by EPA in the August 20, 1991 exclusion requires GROWS to analyze metal constituents using the Toxicity Characteristic Leaching Procedure (TCLP), cyanide using a distilled water leaching procedure, and organics using total constituent analysis.

The tools used by EPA in its evaluation of petitioned wastes have changed since the 1986 GROWS' delisting petition was granted. The changes in the methods used by EPA in evaluation of requests for exclusions are described below and in section II. B. of this preamble.

In addition to the two most recent years of verification testing results mentioned above, we also requested that GROWS submit the results of total constituent analyses for a minimum of four samples for the inorganic constituents. This was necessary because both total constituent analysis data and leachate data are now used in assessing the potential risk from disposal of a petitioned waste, and there is no reliable way to estimate actual total constituent concentrations of the inorganic constituents from leachate data. GROWS submitted this additional information on June 12, 2000, September 21, 2000, and February 5, 2001.

The maximum total and leachate concentrations for the inorganic constituents which were found in the verification testing results and in the additional information provided by GROWS are presented in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Arsenic	11.6	0.017
Barium	47.0	0.77
Cadmium	0.5	0.02
Chromium	9.3	0.02
Lead	8.0	0.65
Mercury	0.3	0.0002
Nickel	4.0	0.098
Selenium	0.3	0.008
Silver	<0.5	0.02
Cyanide (total)	<1.0	0.009

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was not detected at the concentration specified in the table.

The verification testing program specified by the current exclusion for GROWS requires only total constituent analysis for the organic constituents but not leachate testing. Leachate testing for organic constituents was not required at the time that the 1986 GROWS'' petition was being evaluated. Organic constituent mobility was estimated by modeling rather than testing.

Because the Agency had not yet developed a reliable leachate test to estimate the migration potential of organic constituents, leachable concentrations of organic constituents in the waste were estimated using a model known as the Organic Leachate Model (OLM). The OLM was based on an empirical relationship involving a waste constituent's aqueous solubility that was derived from a supporting data base of waste constituent concentrations and experimentally measured leachate concentrations. (*See* 50 FR 48953 for a

complete description of the model, and 51 FR 41084 for a description of changes that were made to the model in response to public comment).

The Agency made it clear that the OLM was an interim tool to be used for this purpose and that it would be replaced when an analytical organic leaching test was developed.

On March 29, 1990, we promulgated the Toxicity Characteristic Rule which included the TCLP (61 FR 11798). In the preamble to this Rule, we stated that it was our intention to use the TCLP in the delisting program. However, we continued to use the OLM instead of the TCLP in the evaluation of those petitions (including the GROWS'' petition) that were then currently being processed.

Because the verification testing program specified by the current exclusion for GROWS does not require TCLP testing for organic constituents, we have evaluated its request for an amendment by calculating theoretical maximum leachate concentrations for the organic constituents by applying the most conservative assumption.

Analyzing a waste for TCLP constituent concentrations involves application of the TCLP (a leaching procedure) followed by analysis of the TCLP leachate for the constituents of concern. For a waste that is a physical solid (*i.e.*, a waste that does not contain a liquid phase), the maximum theoretical leachate concentration can be calculated by dividing the total concentration of the constituent by twenty. This twenty-fold dilution is part of the TCLP protocol and represents the liquid to solid ratio employed in the test procedure.

If the TCLP were performed on the actual wastewater treatment sludge filter cake, the concentration of the constituents in the TCLP leachate could not exceed the calculated value derived from the procedure described above. The actual TCLP concentration, if determined, may be substantially less than the calculated value because the calculated value assumes that 100 percent of the constituent leaches from the waste.

The maximum (measured) total and maximum (calculated) leachate concentrations for all detected organic constituents in GROWS' waste samples are presented in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUTENT [1] AND LEACHATE CONCENTRATIONS WWTP FILTER CAKE

Organic constituents	Measured total constituent concentration (mg/kg)	Calculated TCLP leachate concentration (mg/l)
Acetone	1.3	0.065
Bis(2-ethylhexyl)phthlate	1.09	0.0545
Carbon Disulfide	0.011	0.00055
Chloroform	0.12	0.006
Cresol, Total	1.23	0.0615
Ethyl Benzene	0.028	0.0014
Methyl Ethyl Ketone (2-Butanone)	1.8	0.09
Methylene Chloride	0.096	0.0048
Napthalene	0.75	0.0375
Phenol	2.6	0.13
Xylene	0.16	0.008

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (*See* 40 CFR 260.22(i)(12)). GROWS submitted signed certifications dated June 12, 2000, October 2, 2000, and February 5, 2001, stating that all submitted information is true, accurate and complete.

B. What Method Did EPA Use To Evaluate Risk?

1. How Did EPA Evaluate Risk When It Reviewed the 1986 GROWS' Petition?

For the current GROWS' delisting determinations, we used the following fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal so that we could determine the potential impact on human health and the environment. This transport model was used to estimate the potential impact of leachable hazardous constituents on an underlying aquifer.

On February 26, 1985, the Agency first proposed the use of an analytical approach to evaluate the potential impact of wastes that are landfilled. The approach proposed at that time involved the use of a groundwater transport model known as the vertical and horizontal spread (VHS) model, adapted from Domenico and Palciauskas.[1] Under a landfill or surface impoundment scenario, the plausible route of exposure that was of most concern to the Agency was the ingestion of contaminated groundwater. The VHS model approximated the transport processes likely to occur in an aquifer below a waste disposal site. The model predicted the dilution of the contaminants in a drinking water aquifer as a result of dispersion in the vertical and horizontal directions. (*See* 50 FR 7896–7900 for a complete description of the model, and 50 FR 48886–48910 for a description of changes that were made to the model in response to public comment).

In applying the VHS model, the Agency made a variety of assumptions to account for a reasonable worst-case disposal scenario. The VHS model was based on the premise that a waste being evaluated was placed in a 40 foot wide, 8 foot deep trench at a disposal site (*i.e.*, a landfill). The length of the trench is a function of the volume of the petitioned waste. The model assumed an infinite source of waste and no aquifer recharge. The model mathematically simulates the migration of toxicant-bearing leachate from the waste into the uppermost underlying aquifer, and the subsequent dilution of the toxicants due to dispersion within the aquifer. The Agency used this model to predict the maximum concentration of the diluted toxicant at a compliance point located 500 feet from the disposal site. The model did not consider biodegradation,

[1] Domenico, P.A. and Palciauskas, V.V, Ground Water, v.20, no.3, pp. 303–311 (1982).

sorption, hydrolysis, or unsaturated soil conditions.

The waste-specific parameters used in the VHS model were the leachate concentrations of constituents of concern and the annual volume of the petitioned waste.

Because of acknowledged limitations of the VHS such as concerns with its ability to consider large waste volumes, wastes stored in surface impoundments, unsaturated soil conditions, groundwater recharge, and longitudinal contaminant dispersion in the aquifer, the Agency worked to develop a more sophisticated model that would account for these waste disposal assumptions and transport processes.

EPA stated in the final rule promulgating the Toxicity Characteristic that it would begin using a more sophisticated model for the delisting program (*See* 55 FR 11833; March 29, 1990). Starting with a proposed rule on July 18, 1991, (56 FR 32993) the fate and transport of constituents in leachate from the bottom of the waste unit through the unsaturated zone and to a drinking water well in the saturated zone was estimated using the EPA Composite Model for Landfill (EPACML). The EPACML accounts for:

- One-dimensional steady and uniform advective flow;
- Contaminant dispersion in the longitudinal, lateral, and vertical directions;
- Sorption.

However, continued advances in groundwater fate and transport modeling have been made in recent years and we now propose the use of a more advanced groundwater fate and transport model for delisting evaluations.

2. How Did EPA Evaluate Risk for This Proposed Amendment?

a. *Introduction.* For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. We used a fate and transport model to predict the release of hazardous constituents from the petitioned waste once it is disposed of to evaluate the potential impact on human health and the environment. To accomplish this, we used a Windows-based software tool, the Delisting Risk Assessment Software Program (DRAS), to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model for estimating groundwater releases. Additional information about the EPACMTP model is provided below. For a detailed description of the DRAS program, *See* 65 FR 58015, September 27, 2000. The technical support document for the DRAS program is available in the public docket for this proposed amendment.

Several revisions have been made to the DRAS program in order to improve the modeling. Specifically, (a) the groundwater inhalation pathway was revised to reflect recent advances in modeling household inhalation from home water use (*e.g.,* showering); (b) the equations used to predict surface volatilization from a landfill have been modified to more accurately reflect true waste concentration releases; (c) the method used to estimate the amount of a constituent that is released to surface water and which eventually becomes freely dissolved in the water column has been improved; and (d) the DRAS was modified to account for bioaccumulation of methyl mercury as a result of the release of mercury into the surface water column.

For a more detailed description of the revisions to the DRAS program listed above, *See* 65 FR 75637, December 4, 2000.

b. *What fate and transport model does the Agency use in the DRAS for evaluating the risks to groundwater from the proposed exempted waste?* We have used the EPACMTP in this tentative delisting determination. The EPACMTP considers the subsurface fate and transport of chemical constituents. The EPACMTP is capable of simulating the fate and transport of dissolved contaminants from a point of release at the base of a waste management unit through the unsaturated zone and underlying groundwater to a receptor well at an arbitrary downstream location in the aquifer. The model accounts for the following mechanisms affecting contaminant migration: Transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium adsorption onto the soil and aquifer solid phase, and biochemical degradation processes.

c. *Why is the EPACMTP fate and transport model an improvement over the EPACML?* The modeling approach used for this proposed rulemaking includes three major enhancements over the EPACML. The enhancements include:

1—Incorporation of additional fate and transport processes (*e.g.,* degradation of chemical constituents);

2—Use of enhanced flow and transport solution algorithms and techniques (*e.g.,* three-dimensional transport) and;

3—Revision of the Monte Carlo methodology (*e.g.,* site-based implementation of available input data).

A discussion of the key enhancements which have been implemented in the EPACMTP is presented in the Agency's Proposed Rule found at 65 FR 58015, September 27, 2000, and the details are provided in the proposed 1995 Hazardous Waste Identification Rule (HWIR) background documents (60 FR 66344, December 21,1995).

C. What Conclusion Did EPA Reach?

EPA believes that the information provided by GROWS provides a reasonable basis to grant GROWS' petition for an amendment to its current delisting. We, therefore, propose to grant GROWS an amendment for an increase in waste volume. The data submitted to support the petition and the Agency's evaluation show that the constituents in the GROWS' wastewater treatment sludge filter cake are below health-based levels used by the Agency for delisting decision-making even at the increased maximum annual waste volume of 2000 cubic years.

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.,* groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for GROWS' petitioned waste. We applied the Delisting Risk Assessment Software (DRAS) described above to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal, and we determined the potential impact of the disposal of GROWS' petitioned waste on human health and the environment. In assessing potential risks to groundwater, we used the increased maximum waste volume and the maximum measured or calculated leachate concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well downgradient from the disposal site. Using an established risk level, the DRAS program can back-calculate receptor well concentrations (referred to as a compliance-point concentration) using standard risk assessment algorithms and Agency health-based numbers.

EPA Region III generally defines acceptable risk levels for the delisting program as wastes with an excess cancer risk of no more than 1×10^{-6} and a

hazard quotient of no more than 0.1 for individual constituents. These are the criteria that we applied to this petition with one exception. A detectable concentration for arsenic of 0.017 mg/l was found in one out of thirty-one samples analyzed. The calculated chemical cumulative risk for ingestion of carcinogenic arsenic at this level is 5.67×10^{-6}. However, we believe that this risk is acceptable because arsenic was detected in only one sample and because the risk is within a generally acceptable range of $1 \times 10^{-6}4$ and $1 \times 10^{-6}6$. This is the type of evaluation that the Region III delisting program makes on a case-specific basis.

Furthermore, EPA recently lowered the Safe Drinking Water Act (SDWA) Maximum Contaminant Level (MCL) for arsenic from 50 µg/l to 10 µg/l (*See* 66 FR 6976, January 22, 2001). Although this recently promulgated level is being reexamined, if the maximum allowable leachate concentration was calculated using the new MCL, the maximum allowable leachate concentration for this waste would be 0.616 mg/l, over 30 times higher than the one detected arsenic leachate concentration. EPA's July 1996 Soil Screening Guidance: User's Guide, EPA/540/R–96/018, states that acceptable levels of contaminants in soils for the groundwater pathway could be derived from SWDA Maximum Contaminant Level Goals (MCLGs) or MCLs. Because the maximum allowable leachate concentration calculated using the new MCL is significantly higher than the concentration calculated using the health-based limit, and because EPA's May 2000 Technical Fact Sheet: Proposed Rule for Arsenic in Drinking Water and Clarifications to Compliance and New Source Contaminants Monitoring, EPA 815–F–00–011, states that naturally occurring levels of arsenic are often higher than these levels, we believe that there can be some flexibility used in setting the allowable concentration of arsenic in leachate.

Therefore, for this amendment, we propose to set the maximum allowable leachate concentration for arsenic at 0.3 mg/l which is the concentration that corresponds to the 1×10^{-4} risk level. This concentration is lower than the 0.79 mg/l level, which is the maximum allowable leachate concentration for arsenic in the current GROWS' delisting. Delisting levels for carcinogenic constituents other than arsenic will still be set at concentrations which correspond to the target risk level of 1×10^{-6}.

Using the maximum compliance-point concentrations and the EPACMTP fate and transport modeling factors, the DRAS further back-calculates the maximum waste constituent concentrations which would not exceed the compliance-point concentrations in groundwater.

The Agency believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of the RCRA Subtitle C program. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

Similarly, the DRAS used the increased waste volume requested in the petition and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, the DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations. In most cases, because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

As a condition of GROWS' current delisting, GROWS must continue to test for a list of constituents. Based on the increased waste volume requested in the petition and the improved risk assessment methodology, new proposed maximum allowable leachate concentrations and maximum allowable total constituent concentrations (as explained below) for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. The maximum allowable concentration of constituents in leachate for all inorganic constituents and the maximum allowable concentration of constituents in leachate or waste for all organic constituents in GROWS' waste samples are presented in Table 3 below. These concentrations (*i.e.,* delisting levels) are part of the proposed verification testing conditions of this amendment.

III. Conditions for Exclusion

A. What Are the Maximum Allowable Concentrations of Hazardous Constituents?

The following table summarizes the maximum allowable constituent concentrations (delisting levels) for GROWS'' waste. We recalculated these delisting levels for each constituent that is part of GROWS'' current delisting using the DRAS and the increased maximum annual waste volume of 2000 cubic yards. These proposed delisting levels were derived from the health-based calculations performed by the DRAS program using either strict health-based levels or MCLs, or from Toxicity Characteristic regulatory levels, whichever resulted in a lower (*i.e.,* more conservative) concentration.

The current maximum allowable constituent concentrations (delisting levels) for GROWS as found in 40 CFR 261 Appendix IX, Table 1, are specified as leachate concentrations for inorganic constituents and as total constituent concentrations for organic constituents for reasons set forth in Section II.B. of this preamble.

Based on the type of waste being evaluated and using the current evaluation techniques developed by the Agency, we believe that groundwater contamination would continue to be the most critical exposure pathway from mismanagement of the waste. Therefore, for this type of evaluation, delisting levels are now typically expressed as TCLP leachate concentrations for both inorganic and organic constituents.

However, because we are proposing to amend the current GROWS' delisting, we have tentatively decided to give GROWS the option of using either: (a) Delisting levels calculated as TCLP leachate concentrations for both inorganic and organic constituents; or (b) delisting levels calculated as TCLP leachate concentrations for the inorganic constituents and delisting levels for the organic constituents which are derived from the TCLP leachate concentrations and recalculated as total constituent concentrations as described below. This option is similar to the current GROWS' verification testing program. The recalculated total constituent concentrations are equally or even more protective than the actual TCLP concentration. In section II.A. of this preamble, we explained that the

TCLP uses a liquid to solid ratio of twenty to one. For a waste such as the wastewater treatment sludge filter cake generated by GROWS that is a physical solid (*i.e.,* a waste that does not contain a liquid phase), the smallest (or lowest) theoretical concentration of a constituent in a waste that can result in a particular TCLP concentration would be the TCLP concentration multiplied by a factor of twenty. Again, because this calculation assumes that all of the constituent present in the waste will leach from the waste, it is the most conservative assumption. The actual total constituent concentration that would result in a particular TCLP concentration would likely be much higher.

Both maximum allowable leachate concentrations and maximum allowable total concentrations for the organic constituents that are part of the GROWS' verification testing program are presented in Table 3.

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE [1]

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
.		
Arsenic	3.00e−01	
Barium	2.34e+01	
Cadmium	1.80e−01	
Chromium	5.00e+00	
Lead	5.00e+00	
Mercury	7.70e−02	
Nickel	9.05e+00	
Selenium	6.97e−01	
Silver	1.23e+00	
Cyanide	4.33e+00	
Acetone	2.28e+01	4.56e+02
Acetonitrile	3.92e+00	7.84e+01
Acetophenone	2.28e+01	4.56e+02
Acrolein	1.53e+03	3.06e+04
Acrylonitrile	7.80e−03	1.56e−01
Aldrin	5.81e−06	1.16e−04
Aniline	7.39e−01	1.48e+01
Anthracene	8.00e+00	1.60e+02
Benz(a)anthracene	1.93e−04	3.86e−03
Benzene	1.45e−01	2.90e+00
Benzo(a)pyrene	1.18e−05	2.36e−04
Benzo(b)fluoranthene	1.07e−04	2.14e−03
Benzo(k)fluoranthene	1.49e−03	2.98e−02
Bis(2-chlorethyl)ether	3.19e−02	6.38e−01
Bis(2-ethylhexyl)phthalate	8.96e−02	1.79e+00
Bromodichloromethane	6.80e−02	1.36e+00
Bromoform(Tribromomethane)	5.33e−01	1.07e+01
Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb)	2.28e−01	4.56e+00
Butylbenzylphthalate	9.29e+00	1.86e+02
Carbon disulfide	2.28e+01	4.56e+02
Carbon tetrachloride	4.50e−02	9.00e−01
Chlordane	5.11e−04	1.02e−02
Chloro-3-methylphenol 4-	2.97e+02	5.94e+03
Chloroaniline, p-	9.14e−01	1.83e+01
Chlorobenzene	6.08e+00	1.22e+02
Chlorobenzilate	4.85e−02	9.70e−01
Chlorodibromomethane	5.02e−02	1.00e+00
Chloroform	7.79e−02	1.56e+00
Chlorophenol, 2-	1.14e+00	2.28e+01
Chrysene	2.04e−02	4.08e−01
Cresol	1.14e+00	2.28e+01
DDD	5.83e−04	1.17e−02
DDE	1.37e−04	2.74e−03
DDT	2.57e−04	5.14e−03
Dibenz(a,h)anthracene	5.59e−06	1.12e−04
Dibromo-3-chloropropane, 1, 2-	3.51e−03	7.02e−02
Dichlorobenzene, 1,3-	9.35e+00	1.87e+02
Dichlorobenzene, 1,2-	1.25e+01	2.50e+02
Dichlorobenzene, 1,4-	1.39e−01	2.78e+00
Dichlorobenzidine, 3,3′-	9.36e−03	1.87e−01
Dichlorodifluoromethane	4.57e+01	9.14e+02
Dichloroethane, 1,1-	1.20e+00	2.40e+01
Dichloroethane, 1,2-	2.57e−03	5.14e−02
Dichloroethylene, 1,1-	7.02e−03	1.40e−01
Dichloroethylene, trans-1,2-	4.57e+00	9.14e+01
Dichlorophenol, 2,4-	6.85e−01	1.37e+01
Dichlorophenoxyacetic acid, 2,4-(2, 4-D)	2.28e+00	4.56e+01

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE [1]—Continued

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Dichloropropane, 1,2-	1.14e−01	2.28e+00
Dichloropropene, 1,3-	2.34e−02	4.68e−01
Dieldrin	6.23e+01	1.25e+03
Diethyl phthalate	2.21e+02	4.42e+03
Dimethoate	6.01e+01	1.20e+03
Dimethyl phthalate	1.20e+02	2.40e+03
Dimethylbenz(a)anthracene, 7,12-	1.55e−06	3.10e−05
Dimethylphenol, 2,4-	4.57e+00	9.14e+01
Di-n-butyl phthalate	5.29e+00	1.06e+02
Dinitrobenzene, 1,3-	2.28e−02	4.56e−01
Dinitromethylphenol, 4,6-, 2-	2.16e−02	4.32e−01
Dinitrophenol, 2,4-	4.57e−01	9.14e+00
Dinitrotoluene, 2,6-	6.54e−03	1.31e−01
Di-n-octyl phthalate	1.12e−02	2.24e−01
Dioxane, 1,4-	3.83e−01	7.66e+00
Diphenylamine	3.76e+00	7.52e+01
Disulfoton	3.80e+02	7.60e+03
Endosulfan	1.37e+00	2.74e+01
Endrin	2.00e−02	4.00e−01
Ethylbenzene	1.66e+01	3.32e+02
Ethylene Dibromide	4.13e−03	8.26e−02
Fluoranthene	5.16e−01	1.03e+01
Fluorene	1.78e+00	3.56e+01
Heptachlor	8.00e−03	1.60e−01
Heptachlor epoxide	8.00e−03	1.60e−01
Hexachloro-1,3-butadiene	9.61e−03	1.92e−01
Hexachlorobenzene	9.67e−05	1.93e−03
Hexachlorocyclohexane, gamma-(Lindane)	4.00e−01	8.00e+00
Hexachlorocyclopentadiene	1.66e+04	3.32e+05
Hexachloroethane	1.76e−01	3.52e+00
Hexachlorophene	3.13e−04	6.26e−03
Indeno (1,2,3-cd) pyrene	6.04e−05	1.21e−03
Isobutyl alcohol	6.85e+01	1.37e+03
Isophorone	4.44e+00	8.88e+01
Methacrylonitrile	2.28e−02	4.56e−01
Methoxychlor	1.00e+01	2.00e+02
Methyl bromide (Bromomethane)	1.28e+02	2.56e+03
Methyl chloride (Chloromethane)	1.80e−01	3.60e+00
Methyl ethylketone	1.37e+02	2.74e+03
Methyl isobutylketone	1.83e+01	3.66e+02
Methyl methacrylate	1.03e+03	2.06e+04
Methyl parathion	1.27e+02	2.54e+03
Methylene chloride	2.88e−01	5.76e+00
Naphthalene	1.50e+00	3.00e+01
Nitrobenzene	1.14e−01	2.28e+00
Nitrosodiethylamine	2.81e−05	5.62e−04
Nitrosodimethylamine	8.26e−05	1.65e−03
Nitrosodi-n-butylamine	7.80e−04	1.56e−02
N-Nitrosodi-n-propylamine	6.02e−04	1.20e−02
N-Nitrosodiphenylamine	8.60e−01	1.72e+01
N-Nitrosopyrrolidine	2.01e−03	4.02e−02
Pentachlorobenzene	1.15e−02	2.30e−01
Pentachloronitrobenzene (PCNB)	5.00e−03	1.00e−01
Pentachlorophenol	4.10e−03	8.20e−02
Phenanthrene	2.09e−01	4.18e+00
Phenol	1.37e+02	2.74e+03
Polychlorinated biphenyls	3.00e−05	6.00e−04
Pronamide	1.71e+01	3.42e+02
Pyrene	3.96e−01	7.92e+00
Pyridine	2.28e−01	4.56e+00
Styrene	6.08e+00	1.22e+02
Tetrachlorobenzene, 1,2,4,5-	9.43e−03	1.89e−01
Tetrachloroethane, 1,1,2,2-	4.39e−01	8.78e+00
Tetrachloroethylene	8.55e−02	1.71e+00
Tetrachlorophenol, 2,3,4,6-	1.81e+00	3.62e+01
Tetraethyl dithiopyrophosphate (Sulfotep)	3.01e+05	6.02e+06
Toluene	4.57e+01	9.14e+02
Toxaphene	5.00e−01	1.00e+01

TABLE 3.—MAXIMUM ALLOWABLE CONCENTRATION OF CONSTITUENTS IN LEACHATE OR IN WASTE [1]—Continued

Constituent	Maximum allowable leachate concentration (mg/l)	Maximum allowable total concentration (mg/kg)
Trichlorobenzene, 1,2,4-	7.24e−01	1.45e+01
Trichloroethane, 1,1,1-	7.60e+00	1.52e+02
Trichloroethane, 1,1,2-	7.80e−02	1.56e+00
Trichloroethylene	3.04e−01	6.08e+00
Trichlorofluoromethane	6.85e+01	1.37e+03
Trichlorophenol, 2,4,5-	9.16e+00	1.83e+02
Trichlorophenol, 2,4,6-	2.76e−01	5.52e+00
Trichlorophenoxyacetic acid, 2,4,5- (245−T)	2.28e+00	4.56e+01
Trichlorophenoxypropionic acid, 2,4,5- (Silvex)	1.00e+00	2.00e+01
Trichloropropane, 1,2,3-	7.69e−04	1.54e−02
Trinitrobenzene, sym-	6.49e+00	1.30e+02
Vinyl chloride	2.34e−03	4.68e−02
Xylenes (total)	3.20e+02	6.40e+03

[1] The term ''e'' in the table is a variation of ''scientific notation'' in base 10 exponential form and is used in this table because it is a convenient way to represent very large or small numbers. For example, 3.00e−03 is equivalent to 3.00×10^{-3} and represents the number 0.003.

B. How Frequently Must GROWS Test the Waste and How Must It Be Managed Until It Is Disposed?

GROWS must continue to test and manage its waste according to the conditions set forth in their current delisting. We are not proposing in this amendment to change the method of sample collection, the frequency of sample analysis or the waste holding procedures currently specified.

C. What Must GROWS Do if the Process Changes?

We are proposing to add this condition as part of the amendment. If GROWS significantly changes the treatment process or the chemicals used in the treatment process, GROWS may not manage the wastewater treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) GROWS must demonstrate that the waste meets the delisting levels set forth in Section III. A. of this preamble; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection to manage the waste under this exclusion. This condition allows GROWS the flexibility to modify its process (*e.g.,* changes in equipment or operating conditions). However, if any significant change is made which may affect the composition of the waste, GROWS must demonstrate that the waste continues to meet the delisting criteria and must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection.

D. What Data Must GROWS Submit?

We are proposing to add this condition as part of the amendment. The data obtained under Paragraphs B and C of this Section must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, and The Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to EPA and the Pennsylvania Department of Environmental Protection within sixty (60) days from the end of the calendar year. Records of operating conditions and analytical data must be compiled, summarized, and maintained onsite for a minimum of three years commencing with the effective date of the finalization of this amendment and must be furnished upon request by EPA or the Pennsylvania Department of Environmental Protection, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records onsite for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted. Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must treat, store, or dispose of the waste in a facility that is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

E. What Happens if GROWS Fails To Meet the Conditions of the Exclusion?

We are proposing to add this condition as part of the amendment. If GROWS violates the terms and conditions established in this exclusion, the Agency may start procedures to withdraw the exclusion.

If GROWS discovers that a condition at the facility or an assumption related to the treatment or disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then GROWS must report any information relevant to that condition in writing to the Regional Administrator or his/her delegatee and The Pennsylvania Department of Environmental Protection within 10 days of discovering that condition.

Upon receiving such information, regardless of its source, the Regional Administrator or his/her delegatee and the Pennsylvania Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment.

The purpose of this condition is to require GROWS to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to

reevaluate the exclusion if new or additional information is provided to the Agency by GROWS which indicates that information on which EPA's decision was based was incorrect or that circumstances have changed such that the information evaluated for the delisting is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires GROWS to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, EPA will act upon such information as appropriate.

EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 et seq. (1978), (APA), to reopen the delisting under the conditions described above.

III. Effect on State Authorizations

This proposed amendment, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed amendment, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, GROWS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

EPA is today making a tentative decision to grant GROWS' petition for amendment. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) 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. 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.*).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 14, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX of Part 261—[Amended]

2. In Table 1 of Appendix IX of Part 261, the entry for ''Geological Reclamation Operations and Waste Systems, Inc., Morrisville, PA'' is revised to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Geological Reclamation Operations Waste Systems, Inc.	Morrisville, Pennsylvania.	Wastewater treatment sludge filter cake from the treatment of EPA Hazardous Waste No. F039, generated at a maximum annual rate of 2000 cubic yards, after July 26, 2001; and disposed of in a Subtitle D landfill. The exclusion covers the filter cake resulting from the treatment of hazardous waste leachate derived from only ''old'' GROWS and non-hazardous leachate derived from only non-hazardous waste sources. The exclusion does not address the waste disposed of in the ''old'' GROWS'' Landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, GROWS must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid: (1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to SW–846 methodologies. (A) *Sample Collection:* Each batch of waste generated over a four-week period must be collected in containers with a maximum capacity of 20-cubic yards. At the end of the four-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the four-week period. (B) *Sample Analysis:* Each four-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to EPA and the Pennsylvania Department of Environmental Protection within sixty (60) days from the end of the calendar year. All data must be accompanied by a signed copy of the statement set forth in 40 CFR 260.22(i)(12) to certify to the truth and accuracy of the data submitted. Records of operating conditions and analytical data must be compiled, summarized, and maintained on-site for a minimum of three years and must be furnished upon request by any employee or representative of EPA or the Pennsylvania Department of Environmental Protection, and made available for inspection. (2) *Waste Holding:* The dewatered filter cake must be stored as hazardous until the verification analyses are completed. If the four-week composite sample does not exceed any of the delisting levels set forth in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed of in accordance with all applicable solid waste regulations. If the four-week composite sample exceeds any of the delisting levels set forth in Condition (3), the filter cake waste generated during the time period corresponding to the four-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed of in accordance with Subtitle C of RCRA. Filter cake which is generated but for which analyses are not complete or valid must be managed and disposed of in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels. (3) *Delisting Levels:* If the concentrations in the four-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (mg/l or mg/kg) also listed below, the four-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA. GROWS has the option of determining whether the filter cake waste exceeds the maximum allowable concentrations for the organic constituents by either performing the analysis on a TCLP leachate of the waste or performing total constituent analysis on the waste, and then comparing the results to the corresponding maximum allowable concentration level.

Constituent	Maximum allowable leachate conc. (mg/l)
(A) Inorganics:	
Arsenic	3.00e−01
Barium	2.34e+01
Cadmium	1.80e−01
Chromium	5.00e+00
Lead	5.00e+00
Mercury	7.70e−02
Nickel	9.05e+00
Selenium	6.97e−01
Silver	1.23e+00

Constituent	Maximum allowable leachate conc. (mg/l)
Cyanide	4.33e+00
Cyanide extractions must be conducted using distilled water in place of the leaching media specified in the TCLP procedure.	

Constituent	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
(B) Organics:		
Acetone	2.28e+01	4.56e+02
Acetonitrile	3.92e+00	7.84e+01
Acetophenone	2.28e+01	4.56e+02
Acrolein	1.53e+03	3.06e+04
Acrylonitrile	7.80e−03	1.56e−01
Aldrin	5.81e−06	1.16e−04
Aniline	7.39e−01	1.48e+01
Anthracene	8.00e+00	1.60e+02
Benz(a)anthracene	1.93e−04	3.86e−03
Benzene	1.45e−01	2.90e+00
Benzo(a)pyrene	1.18e−05	2.36e−04
Benzo(b)fluoranthene	1.07e−04	2.14e−03
Benzo(k)fluoranthene	1.49e−03	2.98e−02
Bis(2-chlorethyl)ether	3.19e−02	6.38e−01
Bis(2-ethylhexyl)phthalate	8.96e−02	1.79e+00
Bromodichloromethane	6.80e−02	1.36e+00
Bromoform (Tribromomethane)	5.33e−01	1.07e+01
Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb)	2.28e−01	4.56e+00
Butylbenzylphthalate	9.29e+00	1.86e+02
Carbon disulfide	2.28e+01	4.56e+02
Carbon tetrachloride	4.50e−02	9.00e−01
Chlordane	5.11e−04	1.02e−02
Chloro-3-methylphenol 4-	2.97e+02	5.94e+03
Chloroaniline, p-	9.14e−01	1.83e+01
Chlorobenzene	6.08e+00	1.22e+02
Chlorobenzilate	4.85e−02	9.70e−01
Chlorodibromomethane	5.02e−02	1.00e+00
Chloroform	7.79e−02	1.56e+00
Chlorophenol, 2-	1.14e+00	2.28e+01
Chrysene	2.04e−02	4.08e−01
Cresol	1.14e+00	2.28e+01
DDD	5.83e−04	1.17e−02
DDE	1.37e−04	2.74e−03
DDT	2.57e−04	5.14e−03
Dibenz(a,h)anthracene	5.59e−06	1.12e−04
Dibromo-3-chloropropane, 1,2-	3.51e−03	7.02e−02
Dichlorobenzene 1,3-	9.35e+00	1.87e+02
Dichlorobenzene, 1,2-	1.25e+01	2.50e+02
Dichlorobenzene, 1,4-	1.39e−01	2.78e+00
Dichlorobenzidine, 3,3'-	9.36e−03	1.87e−01
Dichlorodifluoromethane	4.57e+01	9.14e+02
Dichloroethane, 1,1-	1.20e+00	2.40e+01
Dichloroethane, 1,2-	2.57e−03	5.14e−02
Dichloroethylene, 1,1-	7.02e−03	1.40e−01
Dichloroethylene, trans-1,2-	4.57e+00	9.14e+01
Dichlorophenol, 2,4-	6.85e−01	1.37e+01
Dichlorophenoxyacetic acid, 2,4-(2,4–D)	2.28e+00	4.56e+01
Dichloropropane, 1,2-	1.14e−01	2.28e+00
Dichloropropene, 1,3-	2.34e−02	4.68e−01
Dieldrin	6.23e+01	1.25e+03
Diethyl phthalate	2.21e+02	4.42e+03
Dimethoate	6.01e+01	1.20e+03
Dimethyl phthalate	1.20e+02	2.40e+03
Dimethylbenz(a)anthracene, 7,12-	1.55e−06	3.10e−05
Dimethylphenol, 2,4-	4.57e+00	9.14e+01
Di-n-butyl phthalate	5.29e+00	1.06e+02
Dinitrobenzene, 1,3-	2.28e−02	4.56e−01
Dinitromethylphenol, 4,6-,2-	2.16e−02	4.32e−01
Dinitrophenol, 2,4-	4.57e−01	9.14e+00
Dinitrotoluene, 2,6-	6.54e−03	1.31e−01
Di-n-octyl phthalate	1.12e−02	2.24e−01
Dioxane, 1,4-	3.83e−01	7.66e+00
Diphenylamine	3.76e+00	7.52e+01

Constituent	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
Disulfoton	3.80e+02	7.60e+03
Endosulfan	1.37e+00	2.74e+01
Endrin	2.00e−02	4.00e−01
Ethylbenzene	1.66e+01	3.32e+02
Ethylene Dibromide	4.13e−03	8.26e−02
Fluoranthene	5.16e−01	1.03e+01
Fluorene	1.78e+00	3.56e+01
Heptachlor	8.00e−03	1.60e−01
Heptachlor epoxide	8.00e−03	1.60e−01
Hexachloro-1,3-butadiene	9.61e−03	1.92e−01
Hexachlorobenzene	9.67e−05	1.93e−03
Hexachlorocyclohexane, gamma-(Lindane)	4.00e−01	8.00e+00
Hexachlorocyclopentadiene	1.66e+04	3.32e+05
Hexachloroethane	1.76e−01	3.52e+00
Hexachlorophene	3.13e−04	6.26e−03
Indeno(1,2,3-cd) pyrene	6.04e−05	1.21e−03
Isobutyl alcohol	6.85e+01	1.37e+03
Isophorone	4.44e+00	8.88e+01
Methacrylonitrile	2.28e−02	4.56e−01
Methoxychlor	1.00e+01	2.00e+02
Methyl bromide (Bromomethane)	1.28e+02	2.56e+03
Methyl chloride (Chloromethane)	1.80e−01	3.60e+00
Methyl ethyl ketone	1.37e+02	2.74e+03
Methyl isobutyl ketone	1.83e+01	3.66e+02
Methyl methacrylate	1.03e+03	2.06e+04
Methyl parathion	1.27e+02	2.54e+03
Methylene chloride	2.88e−01	5.76e+00
Naphthalene	1.50e+00	3.00e+01
Nitrobenzene	1.14e−01	2.28e+00
Nitrosodiethylamine	2.81e−05	5.62e−04
Nitrosodimethylamine	8.26e−05	1.65e−03
Nitrosodi-n-butylamine	7.80e−04	1.56e−02
N-Nitrosodi-n-propylamine	6.02e−04	1.20e−02
N-Nitrosodiphenylamine	8.60e−01	1.72e+01
N-Nitrosopyrrolidine	2.01e−03	4.02e−02
Pentachlorobenzene	1.15e−02	2.30e−01
Pentachloronitrobenzene (PCNB)	5.00e−03	1.00e−01
Pentachlorophenol	4.10e−03	8.20e−02
Phenanthrene	2.09e−01	4.18e+00
Phenol	1.37e+02	2.74e+03
Polychlorinated biphenyls	3.00e−05	6.00e−04
Pronamide	1.71e+01	3.42e+02
Pyrene	3.96e−01	7.92e+00
Pyridine	2.28e−01	4.56e+00
Styrene	6.08e+00	1.22e+02
Tetrachlorobenzene, 1,2,4,5-	9.43e−03	1.89e−01
Tetrachloroethane, 1,1,2,2-	4.39e−01	8.78e+00
Tetrachloroethylene	8.55e−02	1.71e+00
Tetrachlorophenol, 2,3,4,6-	1.81e+00	3.62e+01
Tetraethyl dithiopyrophosphate (Sulfotep)	3.01e+05	6.02e+06
Toluene	4.57e+01	9.14e+02
Toxaphene	5.00e−01	1.00e+01
Trichlorobenzene, 1,2,4-	7.24e−01	1.45e+01
Trichloroethane, 1,1,1-	7.60e+00	1.52e+02
Trichloroethane, 1,1,2-	7.80e−02	1.56e+00
Trichloroethylene	3.04e−01	6.08e+00
Trichlorofluoromethane	6.85e+01	1.37e+03
Trichlorophenol, 2,4,5-	9.16e+00	1.83e+02
Trichlorophenol, 2,4,6-	2.76e−01	5.52e+00
Trichlorophenoxyacetic acid, 2,4,5-(245–T)	2.28e+00	4.56e+01
Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	1.00e+00	2.00e+01
Trichloropropane, 1,2,3-	7.69e−04	1.54e−02
Trinitrobenzene, sym-	6.49e+00	1.30e+02
Vinyl chloride	2.34e−03	4.68e−02
Xylenes (total)	3.20e+02	6.40e+03

(4) *Changes in Operating Conditions:* If GROWS significantly changes the treatment process or the chemicals used in the treatment process, GROWS may not manage the treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) GROWS must demonstrate that the waste meets the delisting levels set forth in Paragraph 3; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process: and (c) it must obtain prior written approval from EPA and the Pennsylvania Department of Environmental Protection to manage the waste under this exclusion.

(5) *Reopener:*

(a) If GROWS discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then GROWS must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate and to the Pennsylvania Department of Environmental Protection within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate and the Pennsylvania Department of Environmental Protection will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2000–8572]

RIN 2127–AI33

Federal Motor Vehicle Safety Standards: Tire Pressure Monitoring Systems; Controls and Displays

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 mandates a rulemaking proceeding to require motor vehicles to be equipped with a tire pressure monitoring system that warns the driver a tire is significantly underinflated. In response, this document proposes to establish a new Federal Motor Vehicle Safety Standard No. 138 that would require tire pressure monitoring systems to be installed in new passenger cars and in new light trucks and multipurpose passenger vehicles.

This document seeks comment on two alternative versions of the new standard. One alternative would require that the driver be warned when the tire pressure in one or more tires, up to a total of 4 tires, has fallen to 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever is higher. The other alternative would require that the driver be warned when tire pressure in one or more tires, up to a total of 3 tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever is higher.

DATES: Comments must be received on or before September 6, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. You can find the number at the beginning of this document.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Mr. Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

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I. Executive Summary

This document proposes to establish a new Federal Motor Vehicle Safety Standard that would require tire pressure monitoring systems (TPMSs) to be installed in new passenger cars and in new light trucks and multipurpose passenger vehicles. Each vehicle's system would include a warning telltale that illuminates to inform the driver when the vehicle has a significantly under-inflated tire.

This document seeks comment on two alternative versions of the new standard. One alternative would require that the driver be warned when the tire pressure in one or more tires, up to a total of 4 tires, has fallen to 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever pressure is higher. The other alternative would require that the driver be warned when tire pressure in one or more tires, up to a total of 3 tires, has fallen to 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever pressure is higher.

To meet the first alternative, vehicle manufacturers would likely need to install direct TPMSs. Direct TPMSs have a tire pressure sensor in each tire.

To meet the second alternative, vehicle manufacturers could install either direct or indirect TPMSs. Indirect TPMSs do not have tire pressure sensors. Current indirect TPMSs rely on the presence of an anti-lock braking system (ABS) to detect and compare differences in the rotational speed of a vehicle's wheels. Wheel speed correlates to tire pressure since the diameter of a tire decreases slightly as tire pressure decreases. The second alternative would require only warnings about pressure loss in up to three tires since most indirect TPMSs cannot detect when all four tires lose pressure at roughly the same rate and become significantly under-inflated.

NHTSA anticipates that vehicle manufacturers would minimize their costs of complying with the second alternative by installing indirect TPMSs in vehicles currently equipped with ABSs and direct TPMSs in vehicles currently not so equipped. For vehicles already equipped with an ABS, the cost of modifying that system to serve the additional purpose of indirectly monitoring tire pressure would be significantly less than the cost of adding a direct TPMS to those vehicles. For vehicles not so equipped, adding a direct TPMS would be the less expensive way of monitoring tire pressure.

NHTSA has two sets of data, one from Goodyear and another from the agency's Vehicle Research and Testing Center (VRTC), on the effect of under-inflated tires on a vehicle's stopping distance. The Goodyear data indicate that a vehicle's stopping distance on wet surfaces is significantly reduced when its tires are properly inflated, as compared to when its tires are significantly under-inflated. The VRTC data indicate little or no effect on a vehicle's stopping distance. For purposes of this rulemaking, NHTSA is using the Goodyear data to establish an upper bound of benefits and the VRTC data to establish a lower bound. The estimates below are the mid-points between those upper and lower bounds.

NHTSA estimates that the first alternative would prevent 10,635 injuries and 79 deaths at an average cost of $66.33 per vehicle.[1] Since approximately 16 million vehicles are produced for sale in the United States each year, the total annual cost of the first alternative would be about $1.06 billion. However, if the average per vehicle fuel and tread life savings ($32.22 and $11.03, respectively) over the lifetime of the vehicle are factored in, the average net cost of the first alternative drops to $23.08 per vehicle, and the total annual cost drops to about $369 million ($1.06 billion − ($516 million + $176 million)) . The second alternative would prevent 6,585 injuries and 49 deaths at an average cost of $30.54 per vehicle.[2] Since approximately 16 million vehicles are produced for sale in the United States each year, the total annual cost of the second alternative would be about $489 million. However, if the average per vehicle fuel and tread wear savings ($16.40 and $5.51, respectively) over the lifetime of the vehicle are factored in, the average net cost of the second alternative drops to $8.63 per vehicle, and the total annual cost drops to about $138 million ($489 million − ($263 million + 88 million). The net cost per equivalent life saved would be $1.9 million for the first alternative and $1.1 million for the second.

The agency believes the proposals would also result in other benefits, such as fewer crashes resulting from tire blowouts, adverse effects on vehicle handling due to inflation pressure loss and hydroplaning, from fewer crashes involving vehicles that had been stopped by the side of the road because of a flat tire, and the prevention of the property damage that results from these crashes. NHTSA has not attempted to quantify those benefits. Those unquantified benefits would be greater for the first alternative than the second alternative.

The agency believes the proposals may also result in additional costs, such as the cost of replacing worn or damaged TPMS equipment and the cost of the time it would take for a driver to react to a low tire pressure warning by pulling over to a gas station to check and inflate the vehicle's tires. NHTSA has not attempted to quantify those costs.

II. Background

A. The Transportation Recall Enhancement, Accountability, and Documentation Act

Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000.[3] Section 13 of the TREAD Act mandates ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated'' within one year of the TREAD Act's enactment. Section 13 also provides that the regulation must take effect within two years of the completion of the rulemaking.

B. Previous Rulemaking on Tire Pressure Monitoring Systems

NHTSA first considered requiring a ''low tire pressure warning device'' in 1970. However, the agency determined that only warning device then available was an in-vehicle indicator, and that its cost was too high.

During the 1970s, several manufacturers developed inexpensive on-tire warning devices. In addition, the price of in-vehicle warning devices dropped significantly.

On January 26, 1981, NHTSA published an Advanced Notice of Proposed Rulemaking (ANPRM)

[1] The range of injuries prevented would be 0 to 21,270, an the range of deaths prevented would be 0 to 158.

[2] The range of injuries prevented would be 0 to 13,170, an the range of deaths prevented would be 0 to 97.

[3] Public Law 106–414.

soliciting public comment on whether the agency should propose a new Federal motor vehicle safety standard requiring each new motor vehicle to have a low tire pressure warning device which would ''warn the driver when the tire pressure in any of the vehicle's tires was significantly below the recommended operating levels.'' (46 FR 8062).

NHTSA noted in the ANPRM that under-inflated tires increase the rolling resistance of vehicles and, correspondingly, decrease their fuel economy. Research data at the time indicated that radial tires under-inflated by 10 pounds per square inch (psi) reduced the fuel economy of the vehicle on which they were mounted by 3 percent. Because of the worldwide oil shortages in the late 1970s and early 1980s, NHTSA was interested in finding ways to increase the fuel economy of passenger vehicles (i.e., passenger cars and multipurpose passenger vehicles). Since surveys conducted by the agency showed that about 50 percent of passenger car tires and 13 percent of truck tires were operated at pressures below the vehicle manufacturers' recommended inflation levels, the agency believed that low tire pressure warning devices would encourage drivers to maintain their tires at the proper inflation level, thus maximizing their vehicles' fuel economy.

Moreover, a 1973 study by Indiana University concluded that under-inflated tires were a probable cause of 1.4 percent of all motor vehicle crashes.[4] Based on that figure, and the approximately 18.3 million motor vehicle crashes then occurring annually in the U.S., the agency suggested that under-inflated tires were probably responsible for 260,000 crashes each year (1.4 percent × 18.3 million crashes).

In the ANPRM, the agency sought answers from the public to several questions, including:

(1) What tire pressure level should trigger the warning device?

(2) Should the agency specify the type of warning device (i.e., on-tire, in-vehicle) to be used?

(3) What would it cost to produce and install an on-tire or in-vehicle warning device?

(4) What is the fuel saving potential of low tire pressure warning devices?

(5) What studies have been performed which would show cause and effect relationships between low tire pressure and auto crashes?

(6) What would be the costs and benefits of a program to educate the public on the benefits of maintaining proper tire pressure?

NHTSA terminated the rulemaking on August 31, 1981. (46 FR 43721, August 31, 1981). The agency did so because public comments on the ANPRM indicated that the low tire pressure warning devices available at the time either had not been proven to be accurate and reliable or were too expensive. The comments indicated that in-vehicle warning devices had been proven to be accurate and reliable, but would have had a retail cost of $200 (in 1981 dollars) per vehicle. NHTSA stated, ''Such a cost increase cannot be justified by the potential benefits, although those benefits might be significant.'' (46 FR 43721). The comments also indicated that on-tire warning devices cost only about $5 (in 1981 dollars) per vehicle, but they had not been developed to the point where they were accurate and reliable enough to be required. The comments also suggested that on-tire warning devices were subject to road hazards, such as scuffing at curbs, ice, mud, etc. However, NHTSA said that it still believed that ''[m]aintaining proper tire inflation pressure results in direct savings to drivers in terms of better gas mileage and longer tire life, as well as offering increased safety.'' (46 FR 43721).

III. Problem Description

Drivers' infrequent monitoring of their vehicles' tire pressure, combined with the difficulty of visually detecting when a tire is several psi below the recommended inflation pressure and with typical tire pressure losses due to natural leakage and seasonal climatic changes, contribute to many vehicles' having under-inflated tires.

A. Infrequent Consumer Monitoring of Tire Pressure

Surveys have shown that most drivers infrequently check the inflation pressure in their vehicles' tires. One such survey was the omnibus survey conducted by the Bureau of Transportation Statistics (BTS) in September 2000 for NHTSA. The BTS conducted 1,017 household interviews. One of the questions posed was: ''How often do you, or the person who checks your tires, check the air pressure in your tires?'' The answers indicated that 29 percent of the respondents stated that they check the air pressure in their tires monthly; 29 percent stated that they check the air pressure only when one or more of their vehicle's tires appears under-inflated; 19 percent stated that they only have the air pressure checked when the vehicle is serviced; 5 percent stated that they only check the air pressure before taking their vehicle on a long trip; and 17 percent stated that they check the air pressure on some other occasion. Thus, 71 percent of drivers stated that they check the air pressure in their vehicles' tires less than once a month.[5]

In addition, NHTSA's National Center for Statistics and Analysis (NCSA) conducted a survey in February 2001. The survey was designed to assess the extent to which passenger vehicle drivers are aware of the recommended air pressure for their tires, if they monitor air pressure, and to what extent actual tire pressure differs from that recommended by the vehicle manufacturer.

Data was collected through the infrastructure of the National Accident Sampling System—Crashworthiness Data System (NASS–CDS). The NASS–CDS consists of 24 Primary Sampling Units (PSUs) located across the country. Within each PSU, a random selection of zip codes was obtained from a list of eligible zip codes. Within each zip code, a random selection of two gas stations was obtained.

A total of 11,530 vehicles were inspected at these gas stations. This total comprised 6,442 passenger cars, 1,874 SUVs, 1,376 vans, and 1,838 pick-up trucks. For analytical purposes, the data were divided into three categories: (1) passenger cars with P-metric tires; (2) pick-up trucks, SUVs, and vans with P-metric tires; and (3) pick-up trucks, SUVs, and vans with either light truck (LT) or flotation tires.

Drivers were asked how often they normally check their tires to determine if they are properly inflated. Their answers are in the following table:

[4] Indiana Tri-Level Study of the Causes of Traffic Accidents, 1973.

[5] The agency notes that it seems likely that the respondents overstated the frequency with which they check tire pressure, particularly given the fact that this survey was conducted during the height of publicity in the fall of 2000 about tire failures on sport utility vehicles.

How often is tire pressure checked?	Drivers of passenger cars (%)	Drivers of pick-up trucks, SUVs and vans (%)	
	P-metric tires	P-metric tires	LT or flotation tires
Weekly	8.76	8.69	8.16
Monthly	21.42	25.19	39.88
When they seem low	25.63	23.58	15.59
When serviced	30.18	27.72	25.54
For long trip	0.99	2.39	2.17
Other	6.46	8.27	6.97
Do not check	6.56	4.16	1.69

These data indicate that only about 30 percent of drivers of passenger cars, 34 percent of drivers of pick-up trucks, SUVs, and vans with P-metric tires, and 48 percent of drivers of pick-up trucks, SUVs, and vans with either LT or flotation tires claim that they check the inflation level in their tires at least once a month.

B. Loss of Tire Pressure Due to Natural and Other Causes

According to data from the tire industry, 85 percent of all tire air pressure losses are the result of slow leaks that occur over a period of hours, days, or months. Only 15 percent of tire air pressure losses are rapid air losses caused by contact with a road hazard, e.g., when a tire is punctured by a large nail that does not end up stuck in the tire. Slow leaks may be caused by many factors. Tires typically lose air pressure through natural leakage and permeation at a rate of 1 pound per square inch (psi) per month. In addition, seasonal climatic changes result in air pressure losses on the order of 1 psi for every 10°F decrease in the ambient temperature. Slow leaks also may be caused by slight damage to a tire, such as a road hazard that punctures a small hole in the tire or a nail that sticks in the tire. The agency has no data indicating how often any of these causes results in a slow leak.

C. Percentage of Motor Vehicles With Under-Inflated Tires

During the tire pressure survey, NASS–CDS crash investigators measured tire pressure on each vehicle coming into the gas station and compared the measured pressures to the vehicle manufacturer's recommended tire pressure. They found that about 36 percent of passenger cars and about 40 percent of light trucks had at least one tire that was at least 20 percent below the vehicle manufacturer's recommended cold inflation pressure. About 26 percent of passenger cars and 29 percent of light trucks had at least one tire that was at least 25 percent below the vehicle manufacturer's recommended cold inflation pressure. The agency notes those levels of under-inflation because they are the threshold levels at which the low tire pressure warning telltale would have to be illuminated in the two alternatives proposed in this NPRM.

D. Consequences of Under-Inflation of Tires

1. Reduced Vehicle Safety

When a tire is used while significantly under-inflated, its sidewalls flex more and the air temperature inside it increases, making the tire more prone to failure. In addition, a significantly under-inflated tire loses lateral traction, making handling more difficult. The agency also has received data from Goodyear indicating that significantly under-inflated tires increase a vehicle's stopping distance on wet surfaces.

NHTSA's crash files do not contain any direct evidence that points to low tire pressure as the cause of any particular crash. However, this lack of data does not imply that low tire pressure does not cause or contribute to any crashes. It simply reflects the fact that measurements of tire pressure are not among the vehicle information included in the crash reports received by the agency and placed in its crash data bases.[6]

The only tire-related data element in the agency's data bases is ''flat tire or blowout.'' Even in crashes for which a flat tire or blowout is reported, crash investigators cannot tell whether low tire pressure contributed to the tire failure.

The agency examined its crash files to gather information on tire-related problems that resulted in crashes. The National Automotive Sampling System—Crashworthiness Data System (NASS–CDS) has trained investigators who collect data on a sample of tow-away crashes around the United States. These data can be weighted to generate national estimates.

The NASS–CDS General Vehicle Form contains a value indicating vehicle loss of control due to a blow out or flat tire. This value is used only when a vehicle's tire went flat, causing a loss of control of the vehicle and a crash. The value is not used for cases in which one or more of a vehicle's tires was under-inflated, preventing the vehicle from performing as well as it could have in an emergency situation.

NHTSA examined NASS–CDS data for 1995 through 1998 and estimated that 23,464 tow-away crashes, or one-half of one percent of all crashes, are caused by blowouts or flat tires each year. This is significantly fewer crashes than estimated by the 1973 Indiana Tri-Level study. However, the 260,000 crashes estimated in that study represented all crashes in which under-inflation was a probable or possible cause. The 23,464 crashes estimated from the NASS–CDS data are tow-away crashes caused by tire failure only. Further, in 1977, only 12 percent of vehicles were equipped with radial tires, while today over 90 percent of vehicles are equipped with radial tires. Radial tires are much more structurally sound than the bias-ply tires that were widely used in 1977. Thus, the current estimate of 23,464 crashes and the 1977 estimate of 260,000 crashes are not comparable.

[6] These crash data bases are the National Automotive Sampling System—Crashworthiness Data System (NASS–CDS) and the Fatality Analysis Reporting System (FARS).

The agency placed the tow-away crashes from the NASS–CDS files into two categories: Passenger car crashes and light truck crashes. Passenger cars were involved in 10,170 of the tow-away crashes caused by blowouts or flat tires, and light trucks were involved in the other 13,294.

NHTSA also examined data from the Fatality Analysis Reporting System (FARS) for evidence of tire problems involved in fatal crashes. In FARS, if tire problems are noted after the crash, the simple fact of their existence is all that is noted. No attempt is made to ascribe a role in the crash to those problems. Thus, the agency does not know whether the noted tire problem caused the crash, influenced the severity of the crash, or simply occurred during the crash. For example, a tire may have blown out and caused the crash, or a tire may have blown out during the crash when the vehicle struck some object such as a curb.

Thus, while an indication of a tire problem in the FARS file gives some clue as to the potential magnitude of tire problems in fatal crashes, the FARS data cannot give a precise measure of the causal role played by those problems. The very existence of tire problems are sometimes difficult to detect and to code accurately. Further, coding practices vary from State to State. Nevertheless, the agency notes that, from 1995 to 1998, 1.10% of all light vehicles involved in fatal crashes were coded as having tire problems. Over 535 fatal crashes involved vehicles coded with tire problems.

Under-inflated tires can contribute to other types of crashes than those resulting from blow outs or tire failure, including crashes which result from: an increase in stopping distance; skidding and/or a loss of control of the vehicle in a curve or in a lane change maneuver; or hydroplaning on a wet surface. However, the agency does not have any data on how often under-inflated tires cause crashes or contribute to their occurrence.

Tires are designed to perform at a specific inflation pressure. When a tire is under-inflated, the shape of its footprint and the pressure it exerts on the road surface are both altered. One consequence of this alteration can be a reduction in the tire's ability to transmit (or generate) braking force to the road surface, at least on wet surfaces.[7] Thus, under-inflated tires may increase a vehicle's stopping distance on wet surfaces. This is discussed more fully in the Benefits section below.

2. Reduced Tread Life

Unpublished data submitted by Goodyear indicate that when a tire is under-inflated, more pressure is placed on the shoulders of the tire, causing the tread to wear incorrectly. The Goodyear data also indicated that the tread on an under-inflated tire wears more rapidly than it would if the tire were inflated to the proper pressure. The agency requests comment on this issue.

The Goodyear data indicate that the average tread life of a tire is 45,000 miles, and the average cost of a tire is $61 (in 2000 dollars). Goodyear also estimated that a tire's average tread life would drop to 68 percent of the expected tread life if tire pressure dropped from 35 psi to 17 psi and remained there. Goodyear also assumed that this relationship was linear. Thus, for every 1 psi drop in tire pressure, tread life would decrease by 1.78 percent (32 percent/18). This loss of tread life would take place over the lifetime of the tire. Thus, according to Goodyear's data, if the tire remained under-inflated by 1 psi over its lifetime, its tread life would decrease by about 800 miles (1.78 percent of 45,000 miles).

As noted above, data from the NCSA tire pressure survey show that 36 percent of passenger cars had at least one tire that was under-inflated by at least 20 percent. The average level of under-inflation of the four tires on these cars was 6.1 psi. Thus, on average, passenger cars could lose about 4,880 miles (6.1 psi $\times$ 800 miles) of tire life due to under-inflation, if their tires were under-inflated to that extent throughout the life of the tires.

As also noted above, data from the NCSA tire pressure survey also show that about 40 percent of light trucks had at least one tire that was under-inflated by at least 20 percent. The average level of under-inflation of the four tires on these light trucks was 7.7 psi. Thus, on average, those light trucks could lose about 6,160 miles (7.7 psi $\times$ 800 miles) of tire life due to under-inflation, if their tires were under-inflated to that extent throughout the life of the tires.

3. Reduced Fuel Economy

Under-inflated tires increase the rolling resistance of vehicles and, correspondingly, decrease their fuel economy. According to a 1978 report,[8] fuel efficiency is reduced by one percent for every 3.3 psi of under-inflation. More recent data provided by Goodyear indicate that fuel efficiency is reduced by one percent for every 2.96 psi of under-inflation.

NHTSA notes that there is an apparent conflict between the Goodyear data indicating under-inflated tires increase a vehicle's stopping distance and the data indicating under-inflated tires increase a vehicle's rolling resistance. Since an under-inflated tire typically has a larger tread surface area (i.e., tire footprint) in contact with the road, the vehicle should have more traction, and its stopping distance should be reduced.

The larger footprint does result in an increase in rolling resistance on dry road surfaces due to increased friction between the tire and the road surface. However, the larger tire footprint also reduces the tire load per unit area. On dry road surfaces, the countervailing effects of a larger footprint and reduced load per unit of area nearly offset each other, with the result that the vehicle's stopping distance performance is only mildly affected by under-inflation.

On wet surfaces, however, under-inflation typically increases stopping distance for several reasons. First, as noted above, the larger tire footprint provides less tire load per area than a smaller footprint. Second, since the limits of adhesion are lower and achieved earlier on a wet surface than on a dry surface, a tire with a larger footprint, given the same load, is likely to slide earlier than the same tire with a smaller footprint because of the lower load per footprint area. The rolling resistance of an under-inflated tire on a wet surface is greater than the rolling resistance of the same tire properly-inflated on the same wet surface. This is because the slightly larger tire footprint on the under-inflated tire results in more rubber on the road and hence more friction to overcome. However, the rolling resistance of an under-inflated tire on a wet surface is less than the rolling resistance of the same under-inflated tire on a dry surface because of the reduced friction caused by the thin film of water between the tire and the road surface. The less tire load per area and lower limits of adhesion of an under-inflated tire on a wet surface are enough to overcome the increased friction caused by the larger footprint of the under-inflated tire. Hence, under-inflated tires cause longer stopping distance on wet surfaces than properly-inflated tires.

IV. Tire Pressure Monitoring Systems

There are two types of tire pressure monitoring systems (TPMSs). Direct systems directly measure the pressure in

[7] On dry surfaces, stopping distance seems to be only mildly affected by inflation pressure. Thomas D. Gillespie, Fundamentals of Vehicle Dynamics, Society of Automotive Engineers, 1992, p. 57.

[8] The Aerospace Corporation, Evaluation of Techniques for Reducing In-use Automotive Fuel Consumption, June 1978.

a vehicle's tires, while indirect ones estimate the pressure. Both types inform the driver when the pressure in one or more tires falls below a pre-determined level. Unless the TPMS is connected to an automatic inflation system, the driver must stop the vehicle and inflate the under-inflated tire(s), preferably to the pressure recommended by the vehicle manufacturer. Currently, TPMSs are available as original equipment on a few vehicle models. They are available also as after-market equipment, but few are sold.

NHTSA's Vehicle Research and Test Center (VRTC) evaluated six direct and four indirect TPMSs that are currently available.[9] The VRTC found that the direct TPMSs were accurate to within an average of ± 1.0 psi, and indirect systems were accurate to within an average of ± 1.1 psi.[10] This leads the agency to believe that current TPMSs are more accurate than the systems that were available at the time of the agency's 1981 rulemaking on TPMSs.

Following is a description of the two types of TPMSs and their advantages and disadvantages.

A. Indirect TPMSs

Indirect TPMSs typically work with the vehicle's anti-lock brake system (ABS). The ABS employs wheel speed sensors to measure the rotational speed of each of the four wheels. As a tire's pressure decreases, the rolling radius decreases, and the rotational speed of that wheel increases correspondingly. Most indirect TPMSs compare each wheel's rotational speed with the rotational speed of the other wheels. If one tire becomes significantly under-inflated while the others remain at the proper pressure, the indirect TPMS can detect it because that wheel's rotational speed is higher than the rotational speed of the other wheels. This information is conveyed to the driver by a simple telltale. The telltale indicates that a tire is under-inflated, but cannot identify which tire is under-inflated. Current vehicles that have indirect systems include the Toyota Sienna, Ford Windstar, and Oldsmobile Alero.

B. Direct TPMSs

Direct TPMSs use pressure sensors, located in each wheel, to directly measure the pressure in each tire. These sensors broadcast data via a wireless radio frequency transmitter to a central receiver which analyzes the data. The central receiver is connected to a display mounted inside the vehicle. The type of display varies from a simple, single telltale to a display showing the pressure and temperature in each tire, sometimes including the spare tire. Thus, direct TPMSs can be linked to a display that tells the driver which tire is under-inflated. An example of a vehicle equipped with a direct system is the Chevrolet Corvette.

C. Advantages and Disadvantages

1. Indirect TPMSs

Indirect TPMSs have several advantages. First, they are less expensive than direct TPMSs for vehicles already equipped with an ABS. If a vehicle is already equipped with an ABS, the vehicle's manufacturer will only have to add the capability to monitor the wheel speed sensors, a low tire pressure warning telltale, and a reset button, and make some software changes. Making these additions and changes in a way that produces indirect systems like those currently on motor vehicles would cost about $12.90 per vehicle. However, as explained below, the agency is uncertain whether such an indirect TPMS would comply with either of the alternatives proposed in this NPRM.

NHTSA tested four current ABS-based indirect TPMSs. None of the four met the proposed requirements for either alternative. These TPMSs had problems detecting two significantly under-inflated tires on the same axle and on the same side of the vehicle. They also did not illuminate the low tire pressure warning telltale when the pressure in the vehicle's tires decreased to 20 percent, or even 25 percent, below the vehicle manufacturer's recommended cold inflation pressure. NHTSA does not know whether improving current indirect TPMSs to meet the requirements of either alternative would result in additional costs. The agency requests comments on this issue.

Pickup trucks comprise about 40 percent of light truck sales. Some percentage of pickup trucks that have ABS have only one wheel speed sensor for the rear axle. In order to meet the requirements of either proposed alternative, NHTSA believes vehicle manufacturers would have to add a fourth wheel speed sensor to these trucks at an estimated cost of $20 per vehicle. The agency assumes for this analysis that about 10 percent of all light trucks, or 7.5 percent of all light vehicles with ABS, would be in this category. However, the agency requests comment on the percentage of pickup trucks that would need this modification.

For vehicles currently without ABS, there are two indirect measurement choices. First, the vehicle manufacturer could add ABS and the necessary TPMS features to the vehicle. NHTSA estimates that this would cost about $240 per vehicle. The agency does not expect manufacturers to make this choice unless they are already planning for other reasons to add ABS. Second, the vehicle manufacturer could add wheel speed sensors and the necessary TPMS features to the vehicle. NHTSA estimates that this approach would cost about $130 per vehicle.

Second, the wheel components of indirect TPMSs are more robust and less likely to sustain damage than the wheel components of direct TPMSs. The wheel speed sensors of indirect TPMSs are located behind the brakes and often are integrated into the wheel hub assembly. This generally shields them from road damage. In addition, the entire brake/hub assembly would rarely be removed. In contrast, the pressure sensors of direct TPMSs are located inside the tire/wheel cavity, potentially subjecting them to road damage. These sensors also may be subject to damage during tire maintenance, i.e., rotating or changing the tires.

Finally, indirect TPMSs do not need an independent power source. They are powered by the car's battery.

Indirect TPMSs also have several disadvantages. First, since most indirect TPMSs calculate tire pressure by comparing the wheel speeds, they cannot detect the loss of pressure if all four tires lose pressure at similar rates. In its evaluation of four indirect TPMSs, the VRTC found that none of them were able to detect when all four of the vehicle's tires were equally under-inflated. The VRTC also found that none of the indirect TPMSs were able to detect when two tires on the same axle or two tires on the same side of the vehicle were equally under-inflated.

Second, most indirect TPMSs cannot detect small pressure losses. The VRTC found that since reductions in tire diameter with reductions in pressure are very slight in the 15–40 psi range, most indirect TPMSs require a 20 to 30 percent drop in pressure before they are able to detect under-inflation. The VRTC also found that those thresholds were highly dependent on tire and loading factors.

Third, vehicles must be moving for indirect TPMSs to detect an under-inflated tire. Thus, if a vehicle's tire is already under-inflated when a person gets in and begins to drive that vehicle, an indirect TPMS will not be able to

[9] An Evaluation of Existing Tire Pressure Monitoring Systems, May 2001. A copy of this report is available in the docket.

[10] This is not to say that the systems were able to detect a 1.0 psi drop in pressure. The systems were accurate within ±1.0 to 1.1 psi once tire pressure had fallen by a certain percentage.

alert the driver until after the vehicle begins moving.

Fourth, most indirect TPMSs need substantial time to calibrate the system, i.e., to ''learn'' the variables associated with distinct tire types under varying driving conditions. The VRTC found that the four indirect TPMSs it evaluated took anywhere from several minutes to several hours to calibrate. Calibration is necessary when a vehicle is first driven. Recalibration is necessary when the pressure in a tire is changed and when the tires are rotated or replaced. Indirect TPMSs do not indicate that the system is in calibration mode. During the calibration mode, the system is not monitoring tire pressure. Thus, if one or more tires becomes significantly under-inflated while the system is calibrating, the driver would not be alerted. Moreover, the agency notes that the calibration process is prone to human error. For example, a driver may accidentally press the reset button when one or more of the vehicle's tires is under-inflated, but not under-inflated enough to illuminate the low tire pressure warning telltale. This would re-calibrate the system so that it accepts the under-inflated condition as normal. The indirect TPMS then would not be able to detect an under-inflated tire until one or more tires was even more under-inflated than it already was. The agency requests comments specifically addressing the issue of human error that may occur with indirect TPMSs.

Fifth, apart from the time needed to calibrate, indirect TPMSs also need several minutes to detect an under-inflated tire. The VRTC found that the four indirect TPMSs it evaluated took one to ten minutes to detect an under-inflated tire.

Sixth, indirect TPMSs cannot tell the driver which tire is under-inflated.

Seventh, indirect TPMSs sometimes incorrectly indicate that a vehicle has an under-inflated tire when the vehicle is being driven on gravel or bumpy roads, is being driven at high speeds, e.g., over 70 mph, or has mismatched tires or a tire that is out of balance or out of alignment.

2. Direct TPMSs

Direct TPMSs have several advantages. First, since direct TPMSs actually measure the pressure in each tire, they are able to detect when any tire or combination of tires is under-inflated, including when all four of the vehicle's tires are equally under-inflated.

Second, since most direct TPMSs are battery-operated, they can operate while the vehicle is stationary. Thus, if a vehicle's tire becomes significantly under-inflated while the vehicle is parked, a direct TPMS can alert the driver as soon as he or she starts the vehicle.

Third, direct TPMSs can detect small pressure losses. Some systems can detect a drop in pressure as small as 1 psi.

Fourth, direct TPMSs can be linked to a display that tells the driver which tire is under-inflated and the actual pressure in each tire.

Fifth, direct TPMSs will not give false positives if the vehicle is being driven on gravel or bumpy roads, or has mismatched tires or a tire that is out of balance or out of alignment.

Direct TPMSs also have disadvantages. First, they are more expensive than indirect TPMSs for vehicles already equipped with ABS. There are two main costs associated with direct TPMSs: sensors and a receiver. There is a wide disparity in costs for sensors, depending on what type of information is sensed.[11] Providing only pressure sensors, as proposed to be required by both alternatives proposed in this NPRM, would cost from $5 to $10 per wheel, or $20 to $40 per vehicle.

The costs associated with a receiver depend upon whether the vehicle already has a receiver capable of receiving and processing the information coming from the sensors. NHTSA estimates that about 60 percent of vehicles currently have such a receiver. Making some software changes and adding a display showing the pressure for each tire would cost about $25 per vehicle. The 40 percent of vehicles without such a receiver would have to be equipped with a receiver incorporating the necessary software and with the display. The agency estimates that this would cost about $40 to $50 per vehicle.

The agency estimates that the total cost of adding a direct TPMS to a vehicle that is already equipped with a receiver would be $49 to $69.[12] For a vehicle that is not already equipped with a receiver, the cost would be $64 to $94. This is more than the cost of adding an indirect TPMS to a vehicle already equipped with an ABS, but less than the cost of adding wheel speed sensors or an ABS and an indirect TPMS to a vehicle not already equipped with an ABS.

Second, the wheel components of direct TPMSs are less robust and more likely to sustain damage than the wheel components of indirect TPMSs, especially when tires are taken off the rim. This issue is discussed above in the section on the advantages of indirect TPMSs. The agency notes, however, that it has not received any information indicating that direct TPMSs have sustained damage during driving or tire maintenance. The agency requests comments on the likelihood of such damage.

Third, most direct TPMSs need an independent power source. Those that do are powered by batteries, which generally have a life span of five to ten years. This also means that unless a direct TPMS is equipped with a low battery warning indicator, the driver might not know when the batteries for a direct TPMS have expired.

Finally, most direct TPMSs must be reset after a vehicle's tires are replaced. When a vehicle's tires are rotated, most direct TPMSs require that the sensor locations be reassigned in the receiver.

3. Tabular Summary of Advantages and Disadvantages of Indirect and Direct TPMSs

ADVANTAGES AND DISADVANTAGES OF INDIRECT AND DIRECT TPMSS

	Indirect TPMSs	Direct TPMSs
Cost of adding to vehicle with ABS, but without receiver	$12.90	$79.
Cost of adding to vehicle with ABS and receiver	$12.90	59.
Cost of adding to vehicle without ABS or receiver	$130 for wheel speed sensors; $240 for ABS	79.

[11] For example, some sensors sense temperature in addition to pressure.

[12] These figures include about $4 per vehicle for the cost of actually installing the direct TPMS.

ADVANTAGES AND DISADVANTAGES OF INDIRECT AND DIRECT TPMSS—Continued

	Indirect TPMSs	Direct TPMSs
Cost of adding to vehicle without ABS, but with receiver	$130 for wheel speed sensors; $240 for ABS	59.
Susceptibility of wheel components to damage during tire installation and removal.	Less likely	More likely.
Need for an independent power source	No	Yes.
Need to reset after a vehicle's tires are replaced or rotated	Yes, system must be re-calibrated	Yes.
Ability to detect loss of air pressure if all four tires lose pressure.	No	Yes.
Ability to detect small pressure losses	No	Yes.
Ability to detect under-inflated tire while vehicle is stationary	No, vehicle must be moving	Yes.
Ability to identify which tire is under-inflated	No	Yes.
Susceptible to giving false indications of a significantly under-inflated tire.	Yes, if the vehicle is being driven on gravel or bumpy roads or at high speeds (≥70 mph) or if it has mismatched tires or a tire out of balance or a out of alignment.	No.

V. Agency Proposal

A. Summary of Proposal

The agency is proposing two alternative versions of the TPMS standard. Both alternatives would require passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, manufactured on or after November 1, 2003, to be equipped with a TPMS and a low tire pressure warning telltale (yellow) to alert the driver that one or more of the vehicle's tires is significantly under-inflated. Both alternatives would require the TPMS in each vehicle to be compatible with all replacement or optional tire sizes/rims recommended for that vehicle by the vehicle manufacturer. Both alternatives would require vehicle manufacturers to provide written instructions, in the owner's manual if one is provided, explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, and what actions drivers should take when the low tire pressure warning telltale is illuminated.

The first alternative would define ''significantly under-inflated'' as the tire pressure 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or an absolute level of pressure to be specified in the new standard, whichever pressure is higher. It would require the low tire pressure warning telltale to illuminate within 10 minutes of driving after any tire or combination of tires on the vehicle becomes significantly under-inflated. It would require the low tire pressure warning telltale to remain illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''on'' (''run'') position. It would require that the telltale be deactivatable, manually or automatically, only when the vehicle no longer has a tire that is significantly under-inflated.

The second alternative would define ''significantly under-inflated'' as the tire pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or an absolute level of pressure to be specified in the new standard, whichever pressure is higher. The absolute pressure levels would be the same for both proposals. The second alternative would require the low tire pressure warning telltale to illuminate within 10 minutes of driving after any tire or combination of tires, up to a total of three tires, becomes significantly under-inflated. Like the first alternative, the second alternative would require the low tire pressure warning telltale to remain illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''on'' (''run'') position. The second alternative also would require that the telltale be deactivatable, manually or automatically, only when the vehicle no longer has a tire that is significantly under-inflated.

The agency believes that only direct TPMSs will be able to meet the requirements of the first alternative. Current indirect TPMSs typically cannot detect significant under-inflation until the pressure in one of the vehicle's tires is about 30 percent below the pressure in at least some of the other tires. Further, they cannot detect when all four tires lose pressure at the same time.

NHTSA believes that direct TPMSs and upgraded indirect TPMSs will be able to meet the requirements of the second alternative. The agency requests comments on whether this goal is practicable.

B. Vehicles Covered by This Proposal

NHTSA is proposing to require TPMSs on passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

NHTSA is not proposing to require TPMSs on motorcycles because, unlike the types of vehicles that would be subject to the proposed standard on TPMS, motorcycles use tubed tires. In order for a direct TPMS to work with tubed tires, the pressure sensor would not only have to be inside the tire, but also inside the tube itself. The agency is not aware of any TPMSs that are made to work with tubed tires.

NHTSA is also not proposing to require TPMSs on medium (10,001–26,000 lbs. GVWR) and heavy (greater than 26,001 lbs. GVWR) vehicles for several reasons. First, this rulemaking is required by the TREAD Act, which was passed in response to the Firestone recall.[13] Since that recall was limited to light vehicles, the agency has limited its study of under-inflation to light vehicles.

[13] On August 9, 2000, Firestone announced that it was recalling 14.4 million ATX, ATX II, and Wilderness tires after receiving scores of complaints alleging that the tread on these tires was separating. NHTSA is investigating these tires and has attributed 203 deaths and more than 700 injuries to crashes involving tread separations on these tires.

Second, the issues associated with under-inflated tires on medium and heavy vehicles are different from and more complex than the issues associated with under-inflated tires on light vehicles. For example, medium and heavy vehicles are equipped with tires that are much larger and have much higher pressure levels than the tires used on light vehicles. In addition, medium and heavy vehicles are generally equipped with more axles and tires than light vehicles. Since the TREAD Act imposed a one-year deadline on this rulemaking, the agency did not have the time to study and analyze those issues sufficiently.

Third, the Federal Motor Carrier Safety Administration (FMCSA) has a program that is addressing tire maintenance issues on heavy, but not medium, vehicles. The FMCSA plans to conduct a comprehensive study, including possible fleet evaluations of different systems, of all the issues related to improvement of heavy vehicle tire maintenance.

NHTSA plans to coordinate with the FMCSA to address the issues associated with heavy vehicle tire maintenance. NHTSA will work with the FMCSA in examining the desirability of proposing a TPMS standard for heavy vehicles. The agency will also consider the implications of those results of that examination for medium vehicles.

C. Definition of ''Significantly Under-Inflated''

Before issuing this notice of proposed rulemaking, NHTSA employees attended numerous meetings with both tire and vehicle manufacturers to discuss TPMSs and how the term ''significantly under-inflated'' should be defined. The agency notes that there is a fundamental disagreement between vehicle and tire manufacturers as to what constitutes significant under-inflation.

In general, the tire manufacturers believe that ''significantly under-inflated'' should be defined as any pressure below the minimum pressure specified by the tire industry's standard-setting bodies for a vehicle's gross vehicle weight rating (GVWR) or gross axle weight rating (GAWR). They argue that any tire with an inflation pressure below the pressure specified by those bodies as necessary to carry the vehicle's GVWR or GAWR creates a potential safety problem. They are concerned that tires with a pressure even 1 psi below this level will experience increased temperatures and be more likely to fail.

The vehicle manufacturers would like the agency to leave the definition of ''significant under-inflation'' to them. They argue that there are too many vehicle-tire-load combinations for the agency to set one standard, and that the vehicle manufacturers can best determine at what inflation pressure a particular tire on a particular vehicle is significantly under-inflated. They suggest that the agency give them the flexibility to determine the level of significant under-inflation for the tires on each vehicle.

NHTSA believes that the tire manufacturers' definition is overly strict. Most manufacturers of light vehicles incorporate some reserve when determining a tire's recommended cold inflation pressure. Thus, the pressure in a tire may fall below that recommended pressure without significantly affecting the safety of the tire.

In addition, the pressures assigned by the tire industry's standard-setting bodies are simply the result of a mathematical calculation that a tire enclosing a given volume of air should be able to carry a certain load. The formula underlying the calculation is decades old. It remains unchanged even though tire technology and construction have changed significantly. A given size of today's tires is more able than the same size of tires 50 or even 25 years ago to carry a load safely. Thus, the tire industry's calculation is a very conservative estimate of the load-carrying capability of today's tires.

NHTSA also does not agree with the vehicle manufacturers' definition. The agency believes that it must set a minimum level to ensure that tires are not operated at pressures the agency believes are too low. The agency is proposing a minimum performance standard. Either proposed alternative would give vehicle manufacturers the freedom to raise the bar. In this case, either alternative would allow them to design TPMSs so that they provide a warning before any tire experiences the amount of pressure loss permitted under the agency proposal. The agency also believes that a minimum performance standard specifying a quantified requirement can work for the various vehicle-tire-load combinations.

NHTSA is proposing two alternative definitions of ''significantly under-inflated.'' The first would define ''significantly under-inflated'' as a tire pressure in one, two, three or four tires that is 20 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever pressure is higher. The second would define ''significantly under-inflated'' as a tire pressure in one, two, or three tires that is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or a minimum level of pressure to be specified in the new standard, whichever pressure is higher.

In selecting these figures, NHTSA considered several factors. First, there is no bright line at the loss of air pressure definitely becomes a safety issue. Second, we did not wish to select a level of pressure loss so low that the warning telltale illuminates so often that it becomes a nuisance. Drivers could end up ignoring such a telltale altogether. Accordingly, we did not want to select a level as low as 10 percent below the manufacturer's recommended pressure. Our assessment of current TPMSs leads us to conclude that detecting 20 percent under-inflation is feasible for direct TPMSs, but may not be feasible for indirect ones. Most current indirect TPMSs are not able to detect differences in inflation pressure among a vehicle's tires that are less than 30 percent. However, we believe that indirect TPMSs can be improved sufficiently to enable them to detect 25 percent differentials. We are asking for comments on these figures. To aid the agency in selecting a figure for the final rule, NHTSA requests any data or analysis relating to the safety implications of under-inflation within the range of under-inflation discussed in this paragraph. It also requests information regarding the practicability of designing and manufacturing such systems.

The agency has data indicating that, as the amount of under-inflation increases, so does the negative effect on the vehicle's braking performance, fuel economy, and tire life. For example, according to data from Goodyear, a vehicle traveling at 62 mph on a wet surface (0.05 inch of water on the road) takes about 442 feet to stop if all of its tires are properly inflated. If all of its tires are under-inflated by 20 percent, the vehicle takes about 462 feet to stop. If all of its tires are under-inflated by 25 percent, the vehicle takes almost 470 feet to stop. The effects of 20 percent and 25 percent under-inflation on a vehicle's fuel economy and tire life are detailed in the Benefits section below.

The agency notes that, in some cases, sole reliance on the 20 percent or 25 percent figure would yield inflation pressures below 140 kPa (20 psi), a pressure at which the agency believes safety may become an issue. For example, the lowest vehicle manufacturer's recommended cold inflation pressure known to the agency is 26 psi. Under the second alternative,

the low tire pressure warning telltale would not have to illuminate until one, two or three tires reaches 19.5 psi because 25 percent below 26 psi is 19.5 psi.

To prevent that from occurring, the agency is proposing to establish a floor. Both the 20 percent figure and the 25 percent figure are coupled with absolute minimum inflation pressures for the different types of tires. The warning telltale would have to be illuminated when the pressure falls to either 20 percent (first alternative) or 25 percent (second alternative) below the vehicle manufacturer's recommended cold inflation pressure, or the specified absolute minimum inflation pressure, whichever pressure is higher. These absolute minimum inflation pressures are specified in the 3rd column of Table 1 (below). (Note: The practical consequences of this floor under the second alternative is that manufacturers may not be able to use indirect TPMSs on vehicles for which the manufacturer's recommended pressure is 27 psi or less. This is because those systems may not be able to detect pressure differentials of less than 25 percent.)

Most passenger cars, minivans and SUVs are equipped with Standard Load P-metric tires. NHTSA chose 140 kPa (20 psi) as the minimum inflation pressure for such tires based on recent testing the agency conducted. The agency ran a variety of Standard Load P-metric tires at 20 psi with a load for 90 minutes on a dynamometer. None of these tires failed. This leads the agency to believe that warnings provided above that level will allow consumers to re-inflate their tires before the tire fails.

140 kPa is about 58 percent of the maximum inflation pressure for Standard Load P-metric tires of 240 kPa. The agency calculated the minimum inflation pressures for the other listed tire types by multiplying their maximum inflation pressures by 58 percent.

The proposed absolute minimum pressure levels for each type of tire are set forth in the following table:

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Tire type	Maximum inflation pressure		Minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric—Standard Load	240, ...	35, ...	140	20
	300, or	44, or	140	20
	350	51	140	20
P-metric—Extra Load	280 or	41 or	160	23
	340	49	160	23
Load Range C	350	51	200	29
Load Range D	450	65	260	38
Load Range E	600	87	350	51

D. Low Tire Pressure Warning Telltale

1. Color

NHTSA is proposing to amend Standard No. 101, Controls and Displays, 49 CFR § 571.101, to require that the warning telltale be yellow. The agency believes that yellow is appropriate because it conveys the message that the driver can continue driving, but should have the tire pressure checked at the earliest opportunity. Red represents a high level of urgency. It is used for a warning that a vehicle system needs immediate attention, and that it is unsafe to drive the vehicle farther. The agency believes that a driver needs to attend to a significantly under-inflated tire, but does not need to stop driving immediately.

2. Symbol

NHTSA is proposing that the warning telltale be identified by one of the symbols shown below. The first symbol was developed by the International Organization for Standardization (ISO), and is currently used in some TPMSs. However, during its May 2001 evaluation of existing TPMSs, NHTSA received some negative comments from evaluators regarding the recognizability of this symbol.[14] As a result, the agency conducted comprehension tests to determine which symbol best conveyed a tire pressure problem to drivers. The agency asked 120 people to look at a picture of 15 symbols, including the ISO symbol, and fill in the blank in the following statement: ''This image has just appeared on your vehicle's dashboard. It is a warning for _____.''

Results of this test showed that the ISO symbol was the least understood among the 15 symbols, with a comprehension rate of only 38%. However, the agency is proposing it as a possible choice because that symbol is currently used in most vehicles equipped with a TPMS. Several of the alternative symbols were recognized 100% of the time. The second proposed symbol below is one of those. Based on comments on this NPRM, the agency will select one of those two symbols and require its use with the telltale.

The third is a symbol that must be used if a vehicle manufacturer provides a display that identifies which tire is significantly under-inflated. The agency notes that many vehicles already have an image of the vehicle built into the dashboard, with lamps located around the image that illuminate when there is a problem (e.g., an incompletely closed door) in that area. Thus, the agency is proposing this symbol in addition to the first two symbols.

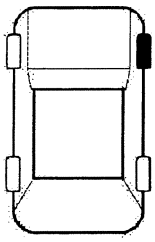
The three proposed symbols are below:

BILLING CODE 4910–59–P

[14] An Evaluation of Existing Tire Pressure Monitoring Systems, May 2001. A copy of this report is available in the docket.

ISO Flat Tire Symbol

Alternative Flat Tire Symbol



Vehicle Symbol Indicating Which Tire Is Significantly Under-inflated

BILLING CODE 4910–59–C

3. Time Frame for Telltale Illumination

As noted above, according to data from the tire industry and consumer surveys, 85 percent of tire pressure losses are slow pressure losses. These are losses in which it takes anywhere from several minutes to several weeks for the tire to become significantly under-inflated. The other 15 percent of tire pressure losses are rapid pressure losses. These losses typically result from a tire's being punctured (without the puncturing object's becoming embedded in the tire) or ruptured. TPMSs are designed to alert the driver to slow pressure losses. They are not intended to alert the driver to a rapid pressure loss.

The agency has received data from TPMS manufacturers indicating that direct TPMSs can alert the driver in less than one minute after a tire becomes significantly under-inflated, while indirect TPMSs can take up to ten minutes to do so. Since TPMSs are designed to alert the driver to slow pressure losses only, the agency believes that ten minutes is ample time. The agency believes that a TPMS that alerts the driver within ten minutes after a tire reaches the significant under-inflation threshold pressure would provide the driver sufficient time to take corrective action and avoid serious tire degradation. Thus, the agency is proposing that the warning telltale must become illuminated not more than ten minutes after a tire becomes significantly under-inflated.

4. Duration of Warning

NHTSA believes that the TPMS warning telltale should be illuminated as long as any of the vehicle's tires remains significantly under-inflated. The agency believes that a driver is more likely to take corrective action if the warning provided is continuous. Thus, in both alternatives, the agency is proposing that the warning telltale remain illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''on'' (''run'') position, whether or not the engine is running.

The agency would like to receive comments specifically addressing this proposed requirement. Would both direct and indirect TPMSs be able to meet this?

5. Self-Check

During vehicle start-up, many vehicle systems provide a system readiness self-check or a bulb-check to provide an initial indication to the driver that the system is operational. NHTSA is aware that it is necessary to drive vehicles with indirect TPMSs for some distance so that the system can calibrate. As a result, these systems may not be capable of completing a full system self-check before the vehicle is driven. The agency also has no data indicating how often bulbs burn out. As a result, the agency is not proposing a system self-check or a bulb-check requirement. The agency requests comments on whether the standard should require a complete system check, a bulb-check, or no check.

E. System Calibration and Reset

NHTSA notes that most indirect TPMSs need substantial time to calibrate the system, i.e., to ''learn'' the variables associated with distinct tire types under varying driving conditions. The VRTC found that the four indirect TPMSs it evaluated took anywhere from several minutes to several hours to calibrate. This calibration is necessary when a vehicle is first driven, when the pressure in a tire is changed, and when the tires are rotated or replaced.

Indirect TPMSs do not indicate that the system is in calibration mode. During the calibration mode, the system is not monitoring tire pressure. Thus, if one or more tires becomes significantly under-inflated while the system is calibrating, the driver would not be alerted.

The agency is not proposing in either alternative that the TPMS indicate to the driver that the system is in calibration mode. The value of such an indication would likely be negligible since the system would only rarely be in that mode. Recalibration by the driver would typically occur only after replacing, rotating or reinflating tires. Nevertheless, the agency requests comment on this. Should this requirement be included?

NHTSA also notes that some TPMSs automatically extinguish the warning telltale when the inflation pressure in a tire rises above the threshold level for warning indication. These systems thus require no action on the part of the driver.

Other TPMSs make it necessary for the driver to reset the system by means of a reset button after taking action to resolve the low tire pressure problem. This may invite human error or abuse. For example, a driver may accidentally press the reset button when one or more of the vehicle's tires is under-inflated, but not under-inflated enough to illuminate the low tire pressure warning telltale. This would re-calibrate the system so that the under-inflated condition would be accepted as a normal variable. The indirect TPMS then would not be able to detect a significantly under-inflated tire until one or more tires was 20 percent or more lower than it already was. This could also occur if the driver simply pressed the reset button when the low tire pressure warning telltale illuminated. The indirect TPMS would re-calibrate the system so that the under-inflated condition would be accepted as a normal variable, and the system would not be able to detect a significantly under-inflated tire until it was 20 percent or more lower than it already was.

The agency is proposing that the warning telltale deactivate, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated. The agency requests comment on this potential problem.

F. System Failure

NHTSA is not proposing that the TPMS must alert the driver in the event of a system malfunction, e.g., by adding a separate system failure telltale. The agency believes that such a requirement might be too costly. However, NHTSA solicits comments on this issue. How difficult would it be to add a system malfunction feature to TPMSs? What are the possible safety benefits of such a feature?

G. Number of Tires Monitored

In the first alternative, the agency is proposing that the TPMS be able to detect when one to four tires becomes significantly under-inflated. In the second alternative, the agency is proposing that the TPMS be able to detect when one to three tires becomes significantly under-inflated. The reason for this difference is that direct TPMSs can detect when all four tires become significantly under-inflated, but most indirect TPMSs cannot.

The agency is requesting comments on whether the second alternative should require that the TPMS be able to detect when all four tires become significantly under-inflated. Under both alternatives, indirect TPMSs would require some improvements in their performance. Current indirect TPMSs that can detect under-inflation only when a tire is 30 percent or more below would have to be improved so they could meet the 25 percent under-inflation requirement for one to three tires. Would requiring that indirect TPMSs be able to detect when all four tires become significantly under-inflated be a reasonable goal? What would the additional benefits and costs of such a requirement be?

H. Replacement Tires/Rims

NHTSA believes that it is important that a TPMS be able to function

properly when the vehicle's original tires are replaced. Thus, the agency is proposing to require that each TPMS be able to meet the requirements of the new standard when any of the vehicle's original tires or rims are replaced with any optional or replacement tire/rim size(s) recommended for use on the vehicle by the vehicle manufacturer.

I. Monitoring of Spare Tire

The Federal motor vehicle safety standards do not require vehicles to be equipped with a spare tire. Thus, the agency is not proposing that the TPMS monitor the pressure in the spare tire while it is stowed.

J. Written Instructions

NHTSA is proposing that the vehicle's owner's manual provide an image of the TPMS symbol with the following information, in English: ''When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. Driving on an under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.'' Each vehicle manufacturer may, at its discretion, provide additional information about the significance of the low tire pressure warning telltale illuminating and description of corrective action to be undertaken.

The agency believes that drivers would need this information so that they would know what to do if the low tire pressure warning telltale illuminates. The agency also believes that more drivers will inflate their tires, and thus experience the benefits associated with properly inflated tires, if they understand the potential consequences of significantly under-inflated tires. The agency requests comments addressing this issue. Is this information sufficient, or should the agency require additional information in the owner's manual?

K. Temperature Compensation

During the driving of a motor vehicle, the temperature in its tires increases. The increased temperature causes increases in the inflation pressure in the tire.[15] This phenomenon could impact the ability of a TPMS to measure or calculate the actual pressure in a tire accurately. A temperature compensation feature in a TPMS compensates for the increased inflation due to temperature increases. Some direct TPMSs employ pressure and temperature sensors located in the wheel. The agency is aware of no indirect TPMSs that are capable of compensating for temperature increases in tires.

It is possible that, without temperature compensation, the illumination of the low tire pressure warning telltale could be delayed due to the increased pressure caused by increased temperature. The telltale also could be extinguished due to the increased tire pressure experienced during normal operation. In addition, large fluctuations in the ambient temperature could result in the low tire pressure warning telltale's being activated on vehicles during ignition, and then de-activated after the vehicle has been driven for awhile and the temperature (and thus the pressure) in a tire increases.

NHTSA is not proposing to require a temperature compensation feature in either proposed alternative. The agency believes such a requirement would have limited value and add slightly to the cost of the proposed standard. The agency also believes that indirect TPMSs would not be able to meet such a requirement. However, the agency is concerned that TPMSs without a temperature compensation feature could allow the cold tire pressure to fall below the absolute minimum inflation pressure proposed in Table 1 without warning the driver. The agency requests comments on whether the standard should include a temperature compensation requirement, and what the safety benefits and costs of such a requirement would be. Also, if NHTSA did require a temperature compensation feature, how would the agency test/regulate it?

Alternatively, the agency could amend the test procedures to specify a cool-down period for tires after a vehicle's TPMS has been tested. This may make the tests more repeatable and accurate. The agency requests comments on this issue.

L. Test Conditions

Under both alternatives, NHTSA is proposing that each vehicle be tested at its gross vehicle weight rating (GVWR) and its lightly loaded vehicle weight (LLVW), defined as unloaded vehicle weight plus up to 400 pounds (including test driver and instrumentation). The ambient temperature would be between 0°C (32°F) and 40°C (104°F). The test road surface would be dry and smooth. The vehicle would be tested at a speed between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

The agency requests comments on these test conditions. For example, some indirect TPMSs require the vehicle to be driven at a variety of speeds, including stops and starts, to calibrate. The agency is proposing that vehicles be tested at a speed between 50 km/h and 100 km/h. This would exclude the stops and starts necessary for some indirect TPMSs to calibrate. It also would necessitate the use of nonpublic test courses, as opposed to public roads, for testing purposes. At what speeds should vehicles be tested? Are there any other driving conditions under which vehicles should be tested?

M. Test Procedures

In both alternatives, NHTSA is proposing that the vehicle's tires be inflated to the vehicle manufacturer's recommended cold inflation pressure. Then the vehicle would be driven between 50 km/h and 100 km/h for up to 20 minutes.

Under the first alternative, while driving at that speed, any combination of tires (from one to all four) is deflated until it is significantly under-inflated. Then the elapsed time between the time the vehicle's tire or combination of tires becomes significantly under-inflated and the time the low tire pressure warning telltale is illuminated is recorded. After the warning telltale illuminates, pressure is added to the tire or combination of tires that was deflated such that the tire or each of those tires is one psi below the level of significant under-inflation. Then the warning telltale is checked to see if it remains illuminated. If the warning telltale remains illuminated, a manual reset is attempted.

Under the second alternative, the procedures are the same, except any combination of tires (from one to three) is deflated until it is significantly under-inflated.

Under both alternatives, the agency is proposing that the test procedures be repeated for each tire and rim combination recommended by the vehicle manufacture for that vehicle. The agency requests comments on whether there are any steps that should be taken between testing different tire and rim combinations and that should be added to the test procedures.

The agency requests comment on all aspects of these test procedures. Should

[15] The actual tire pressure increase due to heat appears to depend on several factors, including whether the tire is under-inflated to start with, the load on the tire, and how much braking has occurred recently. The agency believes that the maximum increase in tire pressure due to increased temperature is 4 psi.

the agency specify more or less than 20 minutes for the system to calibrate? As noted above in the section on Temperature Compensation, the inflation pressure in tires increases as they heat up during normal operation. This may cause variations in testing. To ensure repeatability, should the agency specify that tires be tested cold? Are there any other procedures the agency should specify?

N. Human Factors

There are two human factors issues involved with TPMSs. The first is what information is displayed to the driver and how that information is displayed. The second is whether the driver responds to the information by checking and inflating the vehicle's tires.

Regarding the information displayed to the driver, NHTSA is proposing only a warning telltale that would illuminate when one or more of the vehicle's tires becomes significantly under-inflated. The agency is not proposing that the pressure in each tire be displayed. However, in NHTSA's analysis of the benefits, both in the PEA and below, the agency assumes that manufacturers who install direct TPMSs will display the pressure in each tire because it will be helpful to drivers in terms of safety, fuel economy, and tread life. Most indirect TPMSs are not capable of displaying the pressure in each tire.

The agency anticipates that drivers would react differently to the different information they receive from TPMSs. Some drivers of vehicles equipped with a direct TPMS would keep track of the pressure in each tire and add pressure to their tires whenever necessary, even before the warning telltale becomes illuminated. These drivers would accrue more benefits in terms of increased safety, fuel efficiency, and tread life than drivers who wait until the warning telltale becomes illuminated.

On the other hand, some drivers who currently check and inflate their own tires frequently enough to avoid significant under-inflation may start to rely on the TPMS warning telltale to indicate under-inflation. The agency believes that this would happen more often with drivers of vehicles equipped with an indirect TPMS, which only illuminate a warning telltale when one or more tires becomes significantly under-inflated, than with drivers of vehicles equipped with a direct TPMS, which display the pressure in each tire. These drivers would accrue fewer benefits in terms of safety, fuel efficiency, and tread life.

NHTSA does not have any information on which to base an estimate of the percentage of drivers who would use the information from a display of the pressure in each tire to inflate their tires more frequently than they currently do, or the percentage of drivers who would rely on the TPMS warning telltale to indicate under-inflation and inflate their tires less frequently than they currently do. The agency requests comment on this issue.

VI. Benefits

Following is a summary of the benefits associated with the two proposed alternatives. For a more detailed analysis, see the agency's Preliminary Economic Assessment (PEA). A copy of the PEA has been placed in the docket.

For purposes of this analysis, the agency assumed that vehicles with a direct TPMS will display a continuous readout of the pressure in each tire and have a warning telltale that illuminates when the vehicle's tires become significantly under-inflated. The agency assumed that 80 percent of drivers would react to this tire-specific information and re-inflate the significantly under-inflated tire(s). For indirect TPMSs, the agency assumed that only 60 percent of drivers would react to a low tire pressure warning telltale and re-inflate their significantly under-inflated tire(s). The agency requests comments on these assumptions.

The safety benefits that the agency has quantified come from calculations of a reduction in stopping distance for vehicles with properly inflated tires. NHTSA notes that the relationship of tire inflation to stopping distance is influenced by road conditions (i.e., wet versus dry), as well as by the road surface composition.

In tests conducted by Goodyear, significant increases were found in the stopping distance of tires that were under-inflated. By contrast, tests conducted by NHTSA at the VRTC testing ground found only minor differences in stopping distance. In some cases, these distances actually decreased with lower inflation pressure. The VRTC tests also found only minor differences between wet and dry road surface stopping distance.

It is likely that some of these differences are due to test track surface characteristics. The VRTC track surface is considered to be extremely aggressive in that it allows for maximum friction with tire surfaces. It is more representative of a new road surface than the worn surfaces on the vast majority of roads.

The Goodyear tests may be biased in other ways. Their basic wet surface tests were conducted on surfaces with .05 inch of standing water. This more than typically would be encountered under normal wet road driving conditions, and thus may exaggerate the stopping distances experienced under most circumstances. On the other hand, crashes are more likely to occur under more hazardous conditions, which may mean that the Goodyear data are less biased when applied to the actual crash-involved population.

Generally speaking, the Goodyear test results imply a significant impact on stopping distance from properly inflated tires, while the VRTC test results imply these impacts would be minor or nonexistent. The analysis below and in the PEA estimates stopping distance impacts using the Goodyear data to establish an upper range of potential benefits. A lower range of no benefit is implied by the current VRTC test results. The estimates detailed below are the mid-points between the upper and lower range of potential benefits.

The benefits from preventable crashes were assumed to occur over all crash types and severities. This assumption recognizes that there are a variety of crash circumstances for which marginal reductions in stopping distance may prevent the crash from occurring. Crash prevention may be more likely under some circumstances than others. For example, it is possible that a larger portion of side impact crashes than head-on crashes might be prevented. In side impact crashes where vehicles are moving perpendicular to each other, reduced stopping distance by one vehicle reduces the speed at which it enters the crash zone and potentially allows the second vehicle to move through the crash zone, thus avoiding the impact. In a head-on collision, both vehicles are moving toward the crash and a reduction in stopping distance for one vehicle may not improve the chances of avoiding the crash as much as in a side impact situation. Moreover, if a separate analysis were conducted for different crash types and severities, the portion of crashes prevented would be greater for crashes at higher speeds. However, NHTSA does not have sufficient information to conduct a separate analysis of each crash circumstance. Instead, the agency has used an overall estimate across all crash types. The agency requests comment on this issue.

A. First Alternative

The first alternative would require the TPMS to illuminate the low tire pressure warning telltale when pressure in any tire or combination of tires decreases to 20 percent below the vehicle manufacturer's recommended

cold inflation pressure for the vehicle's tires or the absolute value specified in proposed Table 1, whichever is higher. Thus, the TPMS would have to provide warning when any number of tires, from one to four tires, is significantly under-inflated.

When a vehicle's tires are under-inflated, and it is traveling on a wet surface, the vehicle takes longer to stop than when its tires are properly inflated. For example, according to data from Goodyear, a vehicle traveling at 62 mph on a wet surface takes about 442 feet to stop if its tires are properly inflated. If its tires are under-inflated by 20 percent, the vehicle takes about 462 feet to stop.

The Goodyear data indicates that, under the first alternative, the average stopping distance of passenger cars across all speeds and driving conditions would be reduced from 137 feet (the average stopping distance for a vehicle with tires 20 percent under-inflated) to 132.1 feet (the average stopping distance for a vehicle with properly inflated tires). The average stopping distance of light trucks would be reduced from 131.5 feet to 127.3 feet. This would reduce the number of crashes involving braking passenger cars by 3.6 percent and braking light trucks by 3.2 percent. The other 96.4 percent of crashes involving braking passenger cars and 96.8 percent of crashes involving braking light trucks would still occur, but at a reduced impact speed. The agency estimates that this would result in 79 fewer fatalities and would prevent or reduce in severity 10,635 nonfatal injuries.[16]

Correct tire pressure also improves a vehicle's fuel economy. Recent data from Goodyear indicate that a vehicle's fuel efficiency is reduced by one percent for every 2.96 psi that its tires are below the vehicle manufacturer's recommended cold inflation pressure. NHTSA estimates that, under the first alternative, the average vehicle would get a little over 2 percent higher fuel economy. This translates into an average discounted value of $32.22 (in 2001 dollars) over the lifetime of the vehicle for passenger cars and light trucks.

Correct tire pressure also increases a tire's life. Data from Goodyear indicate that for every 1 psi drop in tire pressure, tread life decreases by 1.78 percent. NHTSA estimates that under the first alternative, the average tire life would increase by 1,404 miles for passenger cars and 1,972 miles for light trucks. This would delay new tire purchases. The agency estimates that the average discounted value of these delayed tire purchases is $5.26 for passenger cars and $16.80 for light trucks.

B. Second Alternative

The second alternative requires the TPMS to illuminate the low tire pressure warning telltale when pressure in any tire or combination of tires, up to a total of three tires, decreases to 25 percent below the vehicle manufacturer's recommended cold inflation pressure for the vehicle's tires, or the absolute value specified in proposed Table 1, whichever is higher.

NHTSA estimates that the second alternative would also reduce a vehicle's stopping distance. However, since the pressure level at which the driver is warned is lower in the second alternative (25 percent versus 20 percent), fewer drivers would receive a low tire pressure warning. Thus, fewer drivers would inflate their tires to the proper pressure, and fewer vehicles would experience the reduced stopping distance. Consequently, the agency estimates that under the second alternative, the reduction in stopping distance would result in 49 fewer fatalities and would prevent or reduce in severity 6,585 nonfatal injuries.[17]

NHTSA estimates that under the second alternative, vehicles' fuel economy would be improved. However, fewer vehicles would experience this improvement for the reasons stated in the previous paragraph. Consequently, the agency estimates that under the second alternative, improved fuel economy would translate into an average discounted value of $16.40 (in 2001 dollars) over the lifetime of the vehicle for passenger cars and light trucks.

NHTSA estimates that under the second alternative, tire life would be increased by 1,131 miles for passenger cars and 1,615 miles for light trucks if they are equipped with a direct TPMS. If they are equipped with an indirect TPMS, the agency estimates that tire life would be increased by 635 miles for passenger cars and 615 miles for light trucks. This would delay new tire purchases. The agency estimates that the average discounted value of these delayed tire purchases is $4.24 for passenger cars and $13.84 for light trucks if they are equipped with a direct TPMS, and $2.39 for passenger cars and $5.17 for light trucks if they are equipped with an indirect TPMS.

NHTSA notes that longer tire life is an economic benefit rather than a safety benefit. The agency is concerned that tires' tread may last longer than other parts of the tire, e.g., the sidewall. Most drivers change their tires when the tread is low. If the tread outlasts the rest of the tire, the tire may fail. The agency believes that part of the cause of the Firestone problem was that the tread lasted longer than expected, allowing other failures to occur. The agency requests comment on this issue.

C. Unquantified Benefits

The agency believes the proposals would also result in other benefits, such as fewer crashes resulting from tire blowouts, adverse effects on vehicle handling due to inflation pressure loss and hydroplaning, from fewer crashes involving vehicles that had been stopped by the side of the road because of a flat tire, and the prevention of the property damage that results from these crashes. For more information on these unquantified benefits, see the PEA. NHTSA has not attempted to quantify those benefits. The agency requests comment on these unquantified benefits.

VII. Costs

A. Indirect TPMSs

The costs of incorporating an indirect TPMS into a vehicle would vary depending on the way in which the incorporation is accomplished. In order to add a current ABS-based indirect TPMS to a motor vehicle that already has an ABS, the agency assumes that the vehicle's manufacturer would only have to add the capability to monitor the wheel speed sensors, a low tire pressure warning telltale, and a reset button, and make some software changes. NHTSA estimates that the cost of adding these features would be about $12.90 per vehicle. However, as explained below, the agency is uncertain whether the resulting ABS-based indirect TPMS would comply with either alternative.

NHTSA tested four current ABS-based indirect TPMSs. None of the four met the proposed requirements for either alternative. These TPMSs had problems detecting two significantly under-inflated tires on the same axle and on the same side of the vehicle. They also did not illuminate the low tire pressure warning telltale when the pressure in the vehicle's tires decreased to 20 percent, or even 25 percent, below the vehicle manufacturer's recommended cold inflation pressure. NHTSA does not know whether improving current indirect TPMSs to meet the requirements of either alternative would

[16] The range of injuries prevented would be 0 to 21,270, and the range of deaths prevented would be 0 to 158.

[17] The range of injuries prevented would be 0 to 13,170, and the range of deaths prevented would be 0 to 97.

result in additional costs. The agency requests comments on this issue.

Pickup trucks comprise about 40 percent of light truck sales. Some percentage of pickup trucks that have ABS have only one wheel speed sensor for the rear axle. In order to meet the requirements of either proposed alternative, NHTSA believes vehicle manufacturers would have to add a fourth wheel speed sensor to these trucks at an estimated cost of $20 per vehicle. The agency assumes for this analysis that about 10 percent of all light trucks, or 7.5 percent of all light vehicles with ABS, would be in this category. However, the agency requests comment on the percentage of pickup trucks that would require this modification.

For vehicles currently without ABS, there are two indirect measurement choices. First, the vehicle manufacturer could add ABS and the necessary TPMS features to the vehicle. NHTSA estimates that this would cost about $240 per vehicle. The agency does not expect manufacturers that make this choice unless they are already planning for other reasons to add ABS. Second, the vehicle manufacturer could add wheel speed sensors and the necessary TPMS features to the vehicle. NHTSA estimates that this approach would cost about $130 per vehicle.

B. Direct TPMSs

There are two main costs associated with direct TPMSs: sensors and a receiver. There is a wide disparity in costs for sensors, depending on what type of information is sensed. Providing pressure sensors would cost from $5 to $10 per wheel, or $20 to $40 per vehicle.

The cost of the receiver depends upon whether the vehicle already has a receiver capable of receiving and processing the information coming from the sensors. NHTSA estimates that about 60 percent of vehicles currently have such a receiver. Making some software changes and adding a display showing the pressure for each tire would cost about $25 per vehicle. The 40 percent of vehicles without such a receiver would have to be equipped with a receiver, a display, and the necessary software. The agency estimates that this would cost about $40 to $50 per vehicle.

The agency estimates that installation costs for a direct TPMS would be about $4 per vehicle.

Thus, the agency estimates that the cost of adding a direct TPMS to a vehicle that is already equipped with a receiver would be $49 to $69. For a vehicle that is not already equipped with a receiver, the cost would be $64 to $94. The agency used the midpoints of $59 and $79 to determine the cost per vehicle of the first alternative

NHTSA determined the current use of TPMSs in new vehicles by using the calendar year 2000 sales, a model year 2001 list of the makes and models with each type of system, and an estimate that 2 percent of sales were purchased as an option on those models that offered a TPMS as an option. As a result, the agency estimates that 4 percent of the model year 2001 light vehicle fleet has an indirect TPMS, and 1 percent of the fleet has a direct TPMS.

NHTSA conducted tear down studies of two currently available direct TPMSs, one produced by Beru and the other produced by Johnson Controls. The agency chose the Beru TPMS because it is considered top-of-the-line. It also was the most expensive direct TPMS the agency found on the market, at a cost of $200. The Johnson Controls direct TPMS, on the other hand, is typical of most direct TPMSs. It cost only $69, similar to the costs estimated by the agency.

C. Testing and Maintenance Costs

There are some costs that would be associated with both direct and indirect TPMSs. For example, both systems would have to be tested for compliance with the proposed requirements. The agency estimates that the man-hours required to complete the testing would be 6 hours for a manager, 30 hours for a test engineer, and 30 hours for a test technician/driver. The agency estimates labor costs would be $75 per hour for a manager, $53 per hour for a test engineer, and $31 per hour for a test technician/driver. Thus, the agency estimates total testing costs would be $2,970 per vehicle model.

D. Unquantified Costs

The agency believes the proposals may also result in additional costs, such as the cost of replacing worn or damaged TPMS equipment, the cost of replacing batteries in a direct TPMS, and the cost of the time it would take for a driver to react to a low tire pressure warning by pulling over to a gas station to check and inflate the vehicle's tires. NHTSA has not attempted to quantify those costs. The agency requests comment on these unquantified costs.

E. First Alternative

Assuming that installation of a direct TPMS would be necessary to achieve compliance, the agency estimates that the average incremental cost would be $66.33 per vehicle. This would result in an average net cost of $23.08 per vehicle ($66.33 − $32.22 (fuel savings) − $11.03 (tread wear savings)), and a net cost per equivalent life saved of $1.9 million. The total annual cost would be about $1.06 billion, or $369 million when the fuel and tread wear savings are factored in.

F. Second Alternative

An indirect TPMS for all passenger cars and light trucks that are already equipped with an ABS would cost an average of $12.90 per ABS-equipped vehicle. The agency assumes that vehicle manufacturers would choose to equip vehicles that are not equipped with an ABS with a direct TPMS because it is cheaper than adding wheel speed sensors or an ABS. The average cost of adding a direct TPMS would be $66.33 per vehicle. The agency estimates that the overall cost of the second alternative would be $30.54 per vehicle, since 67 percent of vehicles are equipped with an ABS, while 33 percent are not. This would result in an average net cost of $8.63 ($30.54 − $16.40 (fuel savings) − $5.51 (tread wear savings)) per vehicle, and a net cost per equivalent life saved of $1.1 million. The total annual cost would be about $489 million, or $138 million when the fuel and tread wear savings are factored in.

VIII. Lead-Time

The TREAD Act requires that this rule take effect two years after the final rule is issued. Since the final rule must be issued by November 1, 2001, the rule must take effect not later than November 1, 2003.

NHTSA requests comment on whether vehicle manufacturers will be able to meet the statutory deadline, and whether TPMS manufacturers will be able to supply enough TPMSs to meet the demand under either of the alternatives proposed in this NPRM.

The agency requests comments also on whether a phase-in beginning on November 1, 2003, would be appropriate. Such a phase-in might provide for the compliance of 35 percent of production in the first year (2003), 65 percent in the second year (2004), and 100 percent in the third year (2005). If a phase-in were adopted, should carry forward credit be given for early compliance?

IX. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making

determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposal is economically significant. Accordingly, it was reviewed under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that compliance with this proposed rule would cost from $30.54 to $66.33 per vehicle per year. Since approximately 16 million vehicles are produced for the United States market each year, this proposal would have greater than a $100 million effect.

Because this proposed rule is significant, the agency has prepared a Preliminary Economic Analysis (PEA). This analysis is summarized above in the sections on Benefits and Costs. The PEA is available in the docket and has been placed on the agency's website along with the proposal itself.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that currently there are only four small motor vehicle manufacturers in the United States that would have to comply with this proposed rule. These manufacturers would have to rely on suppliers to provide the TPMS hardware, and then they would have to integrate the TPMS into their vehicles.

There are a few small manufacturers that manufacture recreational vehicles which would have to comply with this proposed rule. However, most of these manufacturers use van chassis supplied by the larger manufacturers, e.g., General Motors, Ford, or DaimlerChrysler, and could use the TPMSs supplied with the chassis. These manufacturers also would not have to test the TPMS for compliance with this proposed rule since they would be able to rely upon the chassis manufacturer's incomplete vehicle documentation.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this proposed rule would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR Part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards when they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $100 million annually, but it would result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. This document seeks comments on two alternatives for achieving the purposes of the TREAD Act mandate.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

In addition, given the statutory deadline of November 1, 2001, for issuance of the final rule, for those comments of 4 or more pages in length, we request that you send 10 additional copies, as well as one copy on computer disc, to: Mr. George Soodoo, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in WordPerfect 8 or Word 2000.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address

given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*

2. On that page, click on ''search.''

3. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In section 571.101, in Table 2, two new entries would be added at the end of the table to read as follows:

§ 571.101 Standard No. 101; controls and displays.

* * * * *

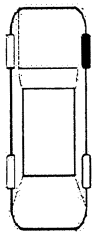
TABLE 2.—IDENTIFICATION AND ILLUSTRATION OF DISPLAYS

Column 1	Column 2	Column 3	Column 4	Column 5
Display	Telltale Color	Identifying Words or Abbreviation.	Identifying Symbol	Illumination.

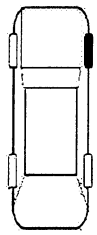
* * * * *

BILLING CODE 4910–59–P

[ALTERNATIVE 1 FOR NEW ENTRIES]

Low Tire Pressure Telltale (that does not identify which tire has low pressure)	Yellow	Tire Pressure Monitoring System or Low Tire Pressure. Also see FMVSS 138		Yes
Low Tire Pressure Telltale (that identifies which tire has low pressure)	Yellow			Yes

[ALTERNATIVE 2 FOR NEW ENTRIES]

Low Tire Pressure Telltale (that does not identify which tire has low pressure)	Yellow	Tire Pressure Monitoring System or Low Tire Pressure. Also see FMVSS 138		Yes
Low Tire Pressure Telltale (that identifies which tire has low pressure)	Yellow			Yes

BILLING CODE 4910–59–C

3. Section 571.138 would be added to read as follows:

§ 571.138 Standard No. 138; tire pressure monitoring systems.

[FIRST ALTERNATIVE FOR S1 THROUGH S6]

S1. *Purpose and scope.* This standard specifies performance requirements for tire pressure monitoring systems to prevent significant under-inflation of tires and the resulting safety problems.

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, and that are manufactured on or after [The date that is two years after date of publication of final rule.].

S3. *Definitions.* The following definitions apply to this standard:

Lightly loaded vehicle weight means unloaded vehicle weight, plus up to 400 pounds (including test driver and instrumentation).

Significantly under-inflated means any inflation pressure that is equal to or less than either the pressure 20 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher.

Tire pressure monitoring system means a system that detects when one or more of a vehicle's tires is significantly under-inflated and illuminates the low tire pressure warning telltale.

S4. *Requirements.*

S4.1 *General.* Each vehicle must be equipped with a tire pressure monitoring system that meets the requirements of S4.2 and S4.3 of this standard under the test conditions of S5 and the test procedures of S6.

S4.2 *Low tire pressure warning telltale.*

S4.2.1 Each tire pressure monitoring system must include a low tire pressure warning telltale that:

(a) Is mounted inside the occupant compartment in clear view of the driver;

(b) Is identified by the symbol or words shown for the ''Low Tire Pressure Telltale'' in Table 2 of Standard No. 101 (§ 571.101);

(c) Becomes illuminated not more than 10 minutes after any of the vehicle's tires becomes significantly under-inflated;

(d) Remains illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''on'' (''run'') position, whether or not the engine is running; and

(e) Can be deactivated, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated.

S4.2.2 In the case of a telltale that identifies which tires are significantly under-inflated, each tire in the symbol

for that telltale must illuminate when the tire it represents is significantly under-inflated.

S4.3 *Replacement tires/rims.* Each tire pressure monitoring system must continue to meet the requirements of this standard when the vehicle's original tires or rims are replaced with any optional or replacement tire/rim size(s) recommended for the vehicle by the vehicle manufacturer.

S4.4 *Written instructions.* The owner's manual in each vehicle must provide an image of the TPMS symbol with the following information, in English: ''When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. Driving on an under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.'' Each vehicle manufacturer may, at its discretion, provide additional information about the significance of the low tire pressure warning telltale illuminating and description of corrective action to be undertaken.

S5. *Test conditions.*

S5.1 *Ambient temperature.* The ambient temperature is between 0°C (32°F) and 40°C (104°F).

S5.2 *Road test surface.* Road tests are conducted on a dry, smooth roadway.

S5.3 *Vehicle conditions.*

S5.3.1 *Test weight.* The vehicle is tested at its lightly loaded vehicle weight and at its gross vehicle weight rating without exceeding any of its gross axle weight ratings.

S5.3.2 *Vehicle speed.* The vehicle is tested at a speed between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

S6. *Test procedures.*

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure.

(b) Drive the vehicle between 50 km/h and 100 km/h for up to 20 minute.

(c) While driving within the speed range specified in paragraph S6(b) of this standard, deflate any tire or combination of the vehicle's tires until that tire or each of those tires is significantly under-inflated.

(d) Continue to drive within the speed range specified in paragraph S6(b) of this standard. Record the elapsed time between the time when the vehicle's tire or combination of tires becomes significantly under-inflated to the time the low tire pressure warning telltale is illuminated.

(e) After the warning telltale illuminates, add pressure (if necessary) to the tire or combination of tires that was deflated such that that tire or each of those tires is one psi below the level of significant under-inflation. Check to see if the warning telltale remains illuminated. If the warning telltale remains on, attempt to manually reset the system in accordance with the written instructions provided by the vehicle manufacturer.

(f) Repeat the test procedures in paragraphs 6(a) through (e) for each tire and rim combination recommended for the vehicle by the vehicle manufacturer.

Tables to § 571.138

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Tire type	Maximum inflation minimum		Pressure activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric—Standard Load	240, ...	35, ...	140	20
	300, or	44, or	140	20
	350	51	140	20
P-metric—Extra Load	280 or	41 or	160	23
	340	49	160	23
Load Range C	350	51	200	29
Load Range D	450	65	260	38
Load Range E	600	87	350	51

[SECOND ALTERNATIVE FOR S1 THROUGH S6]

S1. *Purpose and scope.* This standard specifies performance requirements for tire pressure monitoring systems to prevent significant under-inflation of tires and the resulting safety problems.

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, and that are manufactured on or after [The date that is two years after date of publication of final rule.].

S3. *Definitions.* The following definitions apply to this standard:

Lightly loaded vehicle weight means unloaded vehicle weight plus up to 400 pounds (including test driver and instrumentation).

Significantly under-inflated means any inflation pressure that is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher.

Tire pressure monitoring system means a system that detects when one or more of a vehicle's tires is significantly under-inflated and illuminates the low tire pressure warning telltale.

S4. *Requirements.*

S4.1 *General.* Each vehicle must be equipped with a tire pressure monitoring system that meets the requirements of S4.2 and S4.3 of this standard under the test conditions of S5 and the test procedures of S6.

S4.2 *Low tire pressure warning telltale.*

S4.2.1 Each tire pressure monitoring system must include a low tire pressure warning telltale that:

(a) Is mounted inside the occupant compartment in clear view of the driver;

(b) Is identified by the symbol or words shown for the ''Low Tire Pressure Telltale'' in Table 2 of Standard No. 101 (§ 571.101);

(c) Becomes illuminated not more than 10 minutes after any of the

vehicle's tires becomes significantly under-inflated;

(d) Remains illuminated as long as any of the vehicle's tires remains significantly under-inflated, and the ignition switch is in the ''on'' (''run'') position, whether or not the engine is running; and

(e) Can be deactivated, manually or automatically, only when all of the vehicle's tires cease to be significantly under-inflated.

S4.2.2 In the case of a telltale that identifies which tires are significantly under-inflated, each tire in the symbol for that telltale must illuminate when the tire it represents is significantly under-inflated.

S4.3 *Replacement tires/rims.* Each tire pressure monitoring system must continue to meet the requirements of this standard when the vehicle's original tires or rims are replaced with any optional or replacement tire/rim size(s) recommended for the vehicle by the vehicle manufacturer.

S4.4 *Written instructions.* The owner's manual in each vehicle must provide an image of the TPMS symbol with the following information, in English: ''When the TPMS warning light is lit, one of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure as indicated on the vehicle's tire inflation placard. Driving on an under-inflated tire causes the tire to overheat and can eventually lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.'' Each vehicle manufacturer may, at its discretion, provide additional information about the significance of the low tire pressure warning telltale illuminating and description of corrective action to be undertaken.

S5. *Test conditions.*

S5.1 *Ambient temperature.* The ambient temperature is between 0°C (32°F) and 40°C (104°F).

S5.2 Road test surface. Road tests are conducted on a dry, smooth roadway.

S5.3 *Vehicle conditions.*

S5.3.1 *Test weight.* The vehicle is tested at its lightly loaded vehicle weight and at its gross vehicle weight rating without exceeding any of its gross axle weight ratings.

S5.3.2 *Vehicle speed.* The vehicle is tested at a speed between 50 km/h (31.1 mph) and 100 km/h (62.2 mph).

S6. *Test procedures.*

(a) Inflate the vehicle's tires to the vehicle manufacturer's recommended cold inflation pressure.

(b) Drive the vehicle between 50 km/h and 100 km/h for up to 20 minutes.

(c) While driving within the speed range specified in paragraph S6(b) of this standard, deflate any tire or combination of the vehicle's tires, up to a total of three tires, until that tire or each of those tires is significantly under-inflated.

(d) Continue to drive within the speed range specified in paragraph S6(b) of this standard. Record the elapsed time between the time when the vehicle's tire or combination of tires becomes significantly under-inflated to the time the low tire pressure warning telltale is illuminated.

(e) After the warning telltale illuminates, add pressure (if necessary) to the tire or combination of tires that was deflated such that that tire or each of those tires is one psi below the level of significant under-inflation. Check to see if the warning telltale remains illuminated. If the warning telltale remains on, attempt to manually reset the system in accordance with the written instructions provided by the vehicle manufacturer.

(f) Repeat the test procedures in paragraphs 6(a) through (e) for each tire and rim combination recommended for the vehicle by the vehicle manufacturer.

Tables to § 571.138

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Tire type	Maximum inflation pressure		Minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric—Standard Load	240, ...	35, ...	140	20
	300, or	44, or	140	20
	350	51	140	20
P-metric—Extra Load	280 or	41 or	160	23
	340	49	160	23
Load Range C	350	51	200	29
Load Range D	450	65	260	38
Load Range E	600	87	350	51

Issued: July 23, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18637 Filed 7–23–01; 1:51 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 66, No. 144
Thursday, July 26, 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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors

TIME: 12 pm–4:30 pm.

PLACE: ADF Headquarters.

DATE: Wednesday, August 1, 2001.

STATUS: Open.

Agenda

12 pm–1 pm—Lunch
1 pm–1:30 pm—Chairman's Report
1:30 pm–3 pm—President's Report
3 pm–4:30 pm—Executive Session (Closed)
4:30 pm—Adjuornment

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who can be reached at (202) 673–3916.

Doris Martin,

Acting President.

[FR Doc. 01–18835 Filed 7–24–01; 3:15 pm]

BILLING CODE 6117–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Arkansas

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Arkansas for review and comment.

SUMMARY: It is the intention of the NRCS in Arkansas to issue revised conservation practice standards for Conservation Cover (Code 327); Conservation Crop Rotation (Code 328); Contour Buffer Strips (Code 332); Cover Crop (Code 340); Field Border (Code 386); Filter Strip (Code 393) Firebreak (Code 394); Nutrient Management (Code 590); Pest Management (Code 595); Soil Salinity Management—Nonirrigated (Code 571); Stripcroping Field (Code 585); Forest Stand Improvement (Code 666); Forest Trails and Landings (Code 655); Site Preparation for Woody Plant Establishment (Code 490).

DATES: Comments will be received on or before August 27, 2001.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225. Copies of the practice will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Arkansas will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Arkansas regarding disposition of those comments and a final determination of change will be made.

Dated: June 14, 2001.

Sonja S. Coderre,

Acting State Conservationist, USDA, Natural Resources Conservation Service.

[FR Doc. 01–18452 Filed 7–25–01; 8:45 am]

BILLING CODE 3410–16–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in St. Louis, Missouri.

SUMMARY: As provided in section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On July 26, 2001, the Council will hold a Business Meeting 3:30 p.m.–5:30 p.m. (central time) during which time the Council members will discuss general Council business. The following day, July 27, 2001, the Council will hold a formal Hearing inviting states from the Midwest and South Central region of the U.S. to testify before the Council regarding the issues raised in the Council's Second Annual Report published in March 2001. The Hearing will be held from 9:30 a.m. to 2 p.m. (central time).

DATES: The Business Meeting will be held on Thursday, July 26, 2001, from 3:30 p.m. to 5:30 p.m. (central time). The Hearing will be held on Friday, July 27, 2001, from 9:30 a.m. to 2:00 p.m. (central time). Both events are open to the public.

ADDRESSES: Both the Business Meeting and the Hearing will take place in the New York Central Room at the Hyatt Regency St. Louis at One St. Louis Union Station, St. Louis, MO 63103. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's Second Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

The next Council meetings will be held on Thursday, September 20, 2001, in Los Angeles, CA and on Thursday, October 11, 2001, in Atlanta, GA.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain

financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC, July 23, 2001.

Thomas A. Till,

Executive Director.

[FR Doc. 01–18736 Filed 7–24–01; 10:30 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010622161–1161–01]

RIN 0607–AA34

Mandatory Automated Export System (AES) Filing for all Items on the Commerce Control List (CCL) and the United States Munitions List (USML)

AGENCY: Bureau of the Census, Commerce.

ACTION: Program notice.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this special program notice to announce to the export community that the Automated Export System (AES) Certification Report was submitted to Congress. The Certification Report verifies the security and successful implementation of the AES, an electronic system for filing Shipper's Export Declarations (SEDs). In the future, the Census Bureau will issue proposed and final rules in the **Federal Register** providing additional information about the AES requirements and allowing the public to comment.

In addition, this notice announces the requirement for the mandatory Automated Export System (AES) filing for all items on the Commerce Control List (CCL) and the United States Munitions List (USML), whether or not a license is required. This requirement is mandated by Public Law 106–113, Title XII, ''Security Assistance,'' Subtitle E, ''Proliferation Prevention Enhancement Act of 1999''. This law will require that exporters or their agent's who are required to file SEDs, file such declarations through the AES with respect to exports of items on the CCL and the USML. Section 1252 of this law stipulates that the mandatory filing through the AES of all items on the CCL and the USML will take effect 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology (NIST) provide certification to the Senate Committee on Foreign Relations and the House Committee on International Relations that the U.S. Customs Service AES mainframe computer system and the U.S. Census Bureau Internet based AESDirect system are secure and functional systems capable of implementing the provisions of Pub. L. 106–113. In response to this provision, the Secretaries of Commerce and Treasury and the Director of NIST provided such certification and an AES Certification Report to the appropriate committees of Congress in June 2001 initiating the 270-day countdown.

DATES: The effective date for the mandatory filing through the AES of all items on the CCL and the USML will be in March 2002. The exact effective date will be specified in appropriate regulations that will be issued to implement this legislation in the near future.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this requirement should be directed to C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, (301) 457–2255 or by fax (301) 457–2645.

SUPPLEMENTARY INFORMATION: On November 29, 1999, the President signed H.R. 3194 into law (Public Law 106–113). The short title to this law, as specified in section 1251, is referred to as the ''Proliferation Prevention Enhancement Act of 1999.'' Section 1252 of this law amends Title 13, United States Code, Chapter 9, Section 301, to add Section ''(h)'' authorizing the Department of Commerce, Census Bureau, to require by regulation mandatory reporting requirements for filing export information through the AES. This Act further specifies that all items on the CCL and the USML that require an SED be reported through the AES, whether or not a license is required. Public Law 106–113 may be found at *http://www.access.gpo.gov/nara.*

The mandatory filing of all items on the CCL and the USML will take effect 270 days after the Department of Commerce, the Department of the Treasury, and the NIST jointly certify to the Senate Committee on Foreign Relations and the House Committee on International Relations that a secure and functional AES mainframe computer system of the U.S. Customs Service (Customs) and the Internet based AESDirect system of the Census Bureau are capable of implementing the provisions and workload volume mandated by the legislation.

The General Services Administration (GSA), Office of Information Security (OIS), conducted independent security and functionality assessments of the AES and AESDirect systems. Between June and September 2000, GSA/OIS conducted a Level I and Level II security assessment of the AES and AESDirect systems. No major security vulnerabilities were discovered in either system. There were some minor vulnerabilities discovered in both systems, however, the Certification Report presented to Congress addresses how each agency either resolved the vulnerabilities or the actions being taken to resolve each vulnerability. A copy of the AES Certification Report with confidential security sections removed is available on the Census Bureau and Customs web sites.

The AES Certification Report certifies the security and functionality of the Customs AES mainframe and the Census Bureau AESDirect system, and describes the findings and specific recommendations for implementing the provisions of the legislation. In the report, the Secretary of Commerce, the Secretary of the Treasury, and the Director of the NIST certify that: (1) The AES and AESDirect systems are secure and functional automated export reporting systems that meet the security requirements established by the Federal Government; (2) The AES and AESDirect systems are capable of implementing the requirements specified in the legislation for the mandatory filing through the AES of all items on the CCL and the USML; and (3) the AES and AESDirect systems are capable of handling the expected volume from the voluntary use of the AES.

Further, the Chief Information Officers of the Department of Commerce, Department of the Treasury, and NIST evaluated the AES and AESDirect security and functionality attributes and have determined that the AES and AESDirect systems meet the security standards as set forth under the Security Standards of the Office of Management and Budget Circular A–130 and the Presidential Decision Directive 63. In addition, the AES has received a security accreditation from Customs, and the AESDirect system has received a security accreditation from the Census Bureau.

Therefore, the AES Certification Report and the Certification Letters jointly presented to the Congressional Committees by the Secretary of

Commerce, the Secretary of the Treasury, and the Director of NIST certify that a secure and functional AES and AESDirect systems are available and capable of handling the reporting through the AES of all items on the CCL and USML. It is further certified that the AES and AESDirect systems are production operational, have been fully tested, and are fully functional with respect to the reporting of all items on the CCL or the USML.

Other Requirements

Executive Orders

This program notice has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. This notice does not represent a collection of information and is not subject to the PRA's requirements.

Program Change

The AES Certification Report was submitted to the House Committee on International Relations on May 31, 2001, and to the Senate Committee on Foreign Relations on June 11, 2001. Therefore, the effective date for implementation of mandatory filing through AES for all items on the CCL and the USML is planned for March 2002.

The actual effective date of the AES mandatory filing requirement is dependent upon the publication and implementation of final regulatory amendments by the Census Bureau, the Bureau of Export Administration, and Customs, with the concurrence of the Department of State. Proposed and final rules defining the regulatory revisions that will be made to implement this legislation will be published in the **Federal Register** in the near future. The provision for the mandatory AES filing of all items on the CCL and USML is not negotiable or subject to comment. However, there may be other operational regulatory provisions required to implement the legislation that will be available for comment by the public.

Dated: July 2, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–18542 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[01–BXA–01]

In the Matter of: Jabal Damavand General Trading Company, Dubai, United Arab Emirates, Respondent; Decision and Order

On June 14, 2001, the Administrative Law Judge (hereinafter the ''ALJ'') issued a Recommended Decision and Order in the above-captioned matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Recommended Decision and Order sets forth the procedural history of the case, the facts of the case, and the detailed findings of fact and conclusions of law. The findings of fact and conclusions of law concern whether Jabal Damavand General Trading Company (hereinafter ''Jabal Damavand'') committed three violations of the Export Administration Regulations (hereinafter the ''Regulations'')[1] and a recommended penalty for those violations.

Based on my review of the record and pursuant to Section 766.22(c) of the Regulations, I am vacating the June 14, 2001 Recommended Decision and Order and referring this case back to the ALJ for further proceedings not inconsistent with this determination.

I. The ALJ's Findings of Fact Are Not Sufficient To Constitute a Violation of Section 764.2(b) or Section 764.2(e) of the Regulations

The facts as found in the Recommended Decision and Order are not sufficient to constitute a violation of either Section 764.2(b) or Section 764.2(e) of the Regulations. The ALJ found that Jabal Damavand violated Section 764.2(b) of the Regulations by causing, aiding, or abetting the reexport of U.S.-origin ferrography lab equipment from the United Arab Emirates to Iran without obtaining from the Commerce Department's Bureau of Export Administration (hereinafter ''BXA'') the reexport authorization that it knew or had reason to know was required by Section 742.8(a)(2) and Section 746.7 of the Regulations. In addition and in connection with the violation of Section 764.2(b), the ALJ found that Jabal Damavand violated Section 764.2(e) of the Regulations by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, license, or authorization issued thereunder occurred, was about to occur, or was intended to occur with respect to the reexport.

Licensing requirements imposed under Section 742.8(a)(2) and Section 746.7 of the Regulations for reexports of U.S.-origin items to Iran are determined by the classification of the item at issue within the Commerce Control List (hereinafter ''CCL''). The Recommended Decision and Order did not include a finding regarding the classification within the CCL of the ferrography lab equipment reexported to Iran by Jabal Damavand. In order to establish that Jabal Damavand violated the reexport licensing requirements contained in Section 742.8(a)(2) or Section 746.7 of the Regulations, there must be a finding that the ferrography lab equipment is classified within an Export Control Classification Number (hereinafter ''ECCN'') that is subject to reexport licensing controls imposed by these sections. Without a finding determining the classification of the ferrography lab equipment, I cannot affirm the ALJ's decision and Jabal Damavand violated Section 764.2(b) and Section 764.2(e) of the Regulations by reexporting the equipment to Iran without a license or other authorization required by the Regulations.

The only mention of the classification of the ferrography lab equipment in the record is BXA's assertion in its May 21, 2001 Motion for Default Order to the ALJ that the equipment is classified as EAR99.[2] If the ferrography lab equipment indeed is classified as EAR99, then neither Section 742.8(a)(2) nor Section 746.7 of the Regulations would require Jabal Damavand to obtain a license or other authorization to reexport the equipment to Iran. Both Section 742.8(a)(2) and Section 746.7 of the Regulations impose reexport licensing requirements based on the classification of an item within certain ECCNs, or based on certain reasons for

[1] The Regulations governing the violations at issue are found in the 1998 version of the Code of Federal Regulations. The Regulations are codified at 15 CFR parts 730–774 (1998) and, to the degree to which they pertain to this matter, are substantially the same as the 2000 version.

[2] An Item is classified as EAR99 when the item is ''subject to'' the Regulations (as defined in Section 734.3 of the Regulations), but is not identified within any specific ECCN on the CCL.

control (*e.g.,* national security controls, nuclear nonproliferation controls). EAR99 items are not classified within a specific ECCN and are not controlled for any of the specific reasons for control listed in either Section 742.8(a)(2) or Section 746.7. Thus, if the classification of the ferrography lab equipment is EAR99, then the alleged facts would not be sufficient to constitute a violation of Section 764.2(b) or Section 764.2(e) of the Regulations.

Accordingly, I am vacating the ALJ's finding that Jabal Damavand violated Section 764.2(b) and Section 764.2(e) of the Regulations by reexporting the ferrography lab equipment to Iran without a license or other authorization required by Section 742.8(a)(2) and Section 746.7 of the Regulations. I am referring this case back to the ALJ for further proceedings to determine the classification of the ferrography lab equipment within the CCL, to ascertain the reexport licensing requirements based on the proper classification of the equipment, and to determine whether Jabal Damavand violated Section 764.2(b) or Section 764.2(e) of the Regulations by reexporting this equipment to Iran without obtaining a required license or other authorization.

II. The ALJ Shall Determine Whether and to What Extent To Consider Jabal Damavand's Late Answer to the Charging Letter

The ALJ's Recommended Decision and Order in this case was issued as a result of BXA's motion for default because Jabal Damavand did not respond to the allegations in the charging letter within the 30-day deadline for the answer set forth in Section 766.6 of the Regulations. However, since the time of the Recommended Decision and Order, the ALJ docketing center has received a response to the charging letter from Jabal Damavand that is dated June 19, 2001. (A copy of this letter was forwarded to me and received in my office on July 11, 2001.)

Although Jabal Damavand's answer to the charging letter was received well after the deadline for the answer set forth in the Regulations, it appears to contain facts that may be directly relevant to the charges. In administrative enforcement actions conducted pursuant to Part 766 of the Regulations, it is the ALJ's responsibility to compile the administrative record, to evaluate the weight and sufficiency of evidence presented, and to render a recommended decision and order based on that record. In this connection, Section 766.16(b) grants the ALJ the authority—either at the request of a party or at the ALJ's own initiative—to extend the time to file an answer to a charging letter, even after the deadline for filing the answer has expired. Accordingly, as part of my referral of this case back to the ALJ for further proceedings, I am instructing the ALJ to determine whether and to what extent Jabal Damavand's answer to the charging letter should be considered in those proceedings.

III. The ALJ Shall Reconsider the Recommended Penalty in Light of Any New Findings of Fact or Conclusions of Law

Finally, in addition to the findings regarding violations of Section 764.2(b) and Section 764.2(e) that I am vacating, the ALJ also found that Jabal Damavand committed a violation of Section 764.2(g) of the Regulations by making a false or misleading statement of material fact directly to BXA or indirectly through any other person for the purpose of or in connection with effecting an export, reexport, or other activity subject to the Regulations. Based on these three violations of the Regulations, the ALJ recommended a penalty of a ten-year denial of Jabal Damavand's export privileges.

Although I agree that the facts as found by the ALJ support the finding that Jabal Damavand committed a violation of Section 764.2(g) of the Regulations, I am nonetheless vacating that finding as well as the recommended penalty for the following reasons. First, the ALJ's recommended findings and conclusion with respect to the violation of Section 764.2(g) may change in light of new information, if any, that is presented during the further proceedings. Second, the violation of Section 764.2(g) was only one of three violations of the Regulations found by the ALJ. The ALJ recommended a ten-year denial of exporting privileges for Jabal Damavand based on three violations of the Regulations, and not on the single violation constituting a false statement or misrepresentation.

Accordingly, I believe the best course of action is to vacate the Recommended Decision and Order in its entirety, and instruct the ALJ to make a new finding whether Jabal Damavand violated Sections 764.2(b), and 764.2(e), and 764.2(g) of the Regulations based on any new information that is available, and to instruct the ALJ to reconsider his recommendation of a ten-year denial period in light of the results of these findings.

Accordingly, it is Therefore Ordered,

First, the June 14, 2001 Recommended Decision and Order is vacated;

Second, this case shall be referred back to the ALJ for further proceedings not inconsistent with this Order during which the ALJ shall determine the classification of the ferrography lab equipment within the CCL, ascertain the proper reexport licensing requirements for the equipment based on its classification, and determine whether Jabal Damavand violated Section 764.2(b) or Section 764.2(e) of the Regulations by reexporting this equipment to Iran without obtaining a license or other authorization required by the Regulations;

Third, the ALJ shall determine whether and to what extent to consider Jabal Damavand's June 19, 2001 response to the charging letter;

Fourth, the ALJ shall reconsider his finding that Jabal Damavand committed a violation of Section 764.2(g) of the Regulations, as well as his recommended penalty of a ten-year denial of Jabal Damavand's export privileges, in light of any new findings of fact or conclusions of law reached as a result of these further proceedings; and

Fifth, this Order shall be served on Jabal Damavand and on BXA, and shall be published in the **Federal Register**.

This order is effective immediately.

Dated: July 19, 2001.

Kenneth I. Juster,

Under Secretary of Commerce for Export Administration.

Recommended Decision and Order

On January 4, 2001, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating this administrative proceeding against Jabal Damavand General Trading Company (hereinafter referred to as ''Jabal Damavand''). The charging letter alleged that Jabal Damavand committed one violation of Section 764.2(b), one violation of Section 764.2(e) and one violation of 764.2(g) of the Export Administration Regulations [1] issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 2000)) (the Act).[2]

Specifically, the charging letter alleged that on or about July 6, 1998, Jabal Damavand

[1] The Regulations governing the violation at issue are found in the 1998 version of the Code of Federal Regulations. The Regulations are codified at 15 CFR Parts 730–774 (1998) and, to the degree to which they pertain to this mater, are substantially the same as the 2000 version.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized See Pub. L. No. 106–508.

caused, aided, or abetted the reexport of U.S.-origin ferrography lab equipment from the United Arab Emirates to Iran without obtaining from BXA the reexport authorization that it knew or had reason to know was required by Sections 742.8(a)(2) and 746.7 of the Regulations. BXA alleged that by engaging in conduct prohibited by or contrary to the Regulations, Jabal Damavand committed one violation of Section 764.2(b) of the Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, license or authorization issued thereunder occurred, was about to occur, or was intended to occur with respect to the shipment, Jabal Damavand committed one violation of Section 764.2(e) of the Regulations.

The charging letter further alleged that, on or about December 11, 1997, prior to shipping the U.S.-origin ferrography lab equipment to Jabal Damavand, the supplier requested end user and final destination information. In response to the request, Jabal Damavand informed the supplier that the item would be installed in the United Arab Emirates, when in fact Jabal Damavand reexported the U.S.-origin ferrography lab equipment to Iran. BXA alleged that, by making a false or misleading statement of material fact either directly to BXA or indirectly through any other person for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, Jabal Damavand committed one violation of Section 764.2(g) of the Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address. In accordance with that section, January 4, 2001, BXA sent to Jabal Damavand at its address in Dabai, United Arab Emirates, notice that it had issued a charging letter against it.

BXA received a signed return receipt on February 2, 2001, indicating that the charging letter had been delivered. Because the receipt was returned from the United Arab Emirates undated, BXA does not know the exact date of service. Under these circumstances, and for the purpose of this default proceeding, BXA has designated February 2, 2001, the day BXA received the return receipt, as the date of service.

To date, Jabal Damavand has not filed an answer to the charging letter. Accordingly, because Jabal Damavand has not answered the charging letter as required by and in the manner set forth in Section 766.6 of the Regulations, Jabal Damavand is in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine the Jabal Damavand committed one violation of Section 764.2(b), one violation of Section 764.2(e) and one violation of 764.2(g) of the Regulations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, suspension from practice before the Department of Commerce, and/or a denial of export privileges. *See* 15 CFR 764.3 (2000).

BXA's motion stated that an appropriate sanction for Jabal Damavand's commission of three violations of the Regulations is issuance of a standard denial order to deny of all of Jabal Damavand's export privileges for 10 years.[3] Jabal Damavand violated the Regulations by causing, aiding, or abetted the reexport of U.S.-orgin ferrography lab equipment from the United States Arab Emirates to Iran without obtaining from BXA the reexport authorization that it knew or had reason to know was required by Sections 742.8(a)(2) and 746.7 of the Regulations and Jabal Damavand made a false and misleading statement to obtain and reexport the U.S.-origin ferrography lab equipment to Iran.

In light of the nature of the violations, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order[4] against Jabal Dasmavand General Trading Company denying all export privileges for a period of 10 years.

Dated: June 14, 2001.

Edwin M. Bladen,

Administrative Law Judge.

[FR Doc. 01–18594 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–871 and A–588–858]

Notice of Initiation of Antidumping Duty Investigations: Certain Blast Furnace Coke Products From the People's Republic of China and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva (China) and Julio Fernandez (Japan) at (202) 482–6412 and (202) 482–0190, respectively, or Donna Kinsella at (202) 482–0194; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

[3] Denial orders can be either ''standard'' or ''non-standard.'' A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the Regulations.

[4] Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petition

On June 29, 2001, the Department of Commerce (the Department) received a petition filed in proper form by the following parties: Shenango Incorporated, Koppers Industries, Inc., DTE Energy Services Inc., Acme Steel Company, and United Steelworkers of America, AFL–CIO (collectively, the petitioners). The Department received information supplementing the petition, on July 6, 2001, July 9, 2001, July 11, 2001, July 17, 2001, July 18, 2001, and July 19, 2001. On July 19, 2001, we received a challenge to industry support for these petitions from Defurco SA. *See* the *Import Administration AD Investigation Checklist*, July 19, 2001 (''*Initiation Checklist*'') (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) at Attachment I–3.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain blast furnace coke from the People's Republic of China (''PRC'') and Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the *Determination of Industry Support for the Petition* section below).

Scope of Investigations

The scope of these investigations covers blast furnace coke made from coal or mostly coal, and other carbon materials, with a majority of individual pieces less than 100 MM (4 inches) of a kind capable of being used in blast furnace operations, whether or not mixed with coke breeze. Blast furnace

coke is generally [1] classified under Harmonized Tariff Schedule United States (''HTSUS'') subheading 2704.00.0025. The tariff classification is provided for descriptive purposes; the scope of the investigation, not the tariff classification of the import, is dispositive.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product [1] in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Thus, based on our analysis of the information presented to the Department by petitioners, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for at least 25 percent of total production of the domestic like product. We have received no opposition from domestic producers or workers. As a result, we find that the domestic producers or workers who support the petition also account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for the petition. *See Initiation Checklist* at Attachment II. Thus, the requirements of section 732(c)(4)(A)(i)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklist.*

Export Price and Normal Value

Where the petitioners obtained data from foreign market research, we contacted the researcher to establish its credentials and to confirm the validity of the information provided. *See* Memorandum to the File from Julio A. Fernandez through Donna Kinsella, *Telephone Conversation with Foreign Market Researcher for Antidumping Petition Regarding Imports of Blast Furnace Coke from Japan,* July 20, 2001 (*Market Research for Japan*). Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist.*

The anticipated period of investigation (POI) for Japan, a market economy country is April 1, 2000, through March 31, 2001, while the anticipated POI for the PRC, a non-market economy (NME) country is October 1, 2000, through March 31, 2001.

Regarding an investigation involving a NME, the Department presumes, based on the extent of central government control in a NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issue of the PRC's status and the granting of separate rates to individual exporters.

China

Export Price

To calculate export price (''EP''), petitioners screened U.S. Census import data, and selected from this data certain imports which they believed were of blast furnace coke to arrive at an estimate for imports of such coke for the period April 2000 through March 2001, falling under the Harmonized Tariff Schedules (''HTSUS'') classification 2704.00.[3] The selected data was broken down by import quantity, customs value, and CIF value. *See Petition* at 14.

For purposes of initiation, the Department has decided to rely instead on average unit values during the POI as reported under HTSUS 2704.00.0025. The Department believes that this HTS number represents a clean category under which all imports of subject coke must enter. The possibility of a misclassification by the U.S. Customs Service is not sufficient to warrant the methodology utilized by petitioners as described above. In particular, the Department does not believe that port and volume-specific import data is representative of U.S. prices of subject merchandise. As a result, as indicated above, we have relied on AUVs to calculate EP.

We obtained from the ITC's Dataweb, U.S. import values for HTS 2704.00.0025. We used the free

[1] In response to the July 6, 2001, deficiency questionnaire, petitioners agreed to change ''may be classified'' to ''are generally classified.''

[2] *See Algoma Steel Corp. Ltd.,* v. *United States*, 688 f. Supp. 639, 642–44 (CIT 1988); *High Information Content flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition.* 56 FR 32376, 32380–81 (July 16, 1991).

[3] Petitioners indicate this data was obtained from the American Coal and Coke Chemicals Institute.

[2] *See Algoma Steel Corp. Ltd.,* v. *United States*, 688 f. Supp. 639, 642–44 (CIT 1988); *High Information Content flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition.* 56 FR 32376, 32380–81 (July 16, 1991).

alongside ship (''FAS'') customs values as the F.O.B. price of merchandise. For purposes of initiation, we have found this to be an appropriate estimate. We deducted estimated foreign inland freight costs from the customs value to arrive at an estimated ex-factory price for use in the comparison of EP and normal values for China.

Petitioners used the selected Customs Values as the free on board (''F.O.B.'') price of the merchandise, packaged and ready for delivery at the foreign port. To approximate ex-factory prices, petitioners deducted foreign inland freight from the selected Customs Value. *See Petition* at 14. Petitioners calculated average foreign inland freight charges using estimated atlas distances and Indian freight rates as a surrogate value.

Normal Value

The petitioners assert that the PRC is an NME country and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is an NME. *See Steel Concrete Reinforcing Bars from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value (''Re-Bars from China''),* 66 FR 33522 (June 22, 2001), and *Foundry Coke Products from the People's Republic of China; Notice of Preliminary Determination of Sales at Less Than Fair Value (''Foundry Coke from China''),* 66 FR 13885 (March 8, 2001). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation.

Petitioners stated that the current domestic coke industry in China consists of both an integrated (recovery process) and an independent sector (beehive oven process) of blast furnace coke. Consequently, petitioners calculated a margin for the recovery process and for the beehive oven process. For NV for the recovery process, the petitioners based the factors of production (FOP), as defined by section 773(c)(3) of the Act, on the consumption rates of two U.S. blast furnace coke producers utilizing the mechanical (recovery) oven production process. The petitioners assert that information regarding Chinese producers' recovery oven consumption rates is not available, and that the U.S. producer employs a production process which is similar to the production processes employed by producers of blast furnace coke in the PRC. Thus, the petitioners have assumed, for purposes of the petition, that producers in the PRC use similar inputs in similar quantities as the U.S. producer and have adjusted these inputs for known differences.

For the beehive oven production process, petitioners based the blast furnace coke FOP on two publicly available sources. The first source is the ITC Section 332 Report. *See Foundry Coke: A Review of the Industries in the United States and China,* (''332 Report'') Inv. No. 332–407, ITC Pub. 3323 (July 2000). The second source is the *Chinese Coke 1999 Directory* (''*Directory*''), published by the TEX Report.

Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national product (''GNP''). Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials, with the exception of ammonium sulphate, were valued based on Indian import values, as published in the *1998 and 1999 Monthly Statistics of Foreign Trade of India,* and inflated based on the Indian Wholesale Price Index. Surrogate value data from India for ammonium sulphate was not available. Instead, petitioners used a value from *Chemical Weekly,* an Indian chemical industry publication. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using *Energy Prices and Taxes, First Quarter 2001,* published by, the Organization for Economic Cooperation and Development (''OECD'') International Energy Agency.

For overhead, depreciation, selling, general, and administrative (''SG&A'') expenses, and profit, the petitioners applied rates derived from the financial statements of Gujarat NRE Coke, Ltd., an Indian coke producer.

Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation.

Based on comparisons of EP to CV, the estimated dumping margins range from 132.2 to 207.2 percent. *See Initiation Checklist* at 11.

Japan

Export Price

To calculate EP, petitioners screened U.S. Census import data, and selected from this data certain imports which they believed were of blast furnace coke to arrive at an estimate for imports of such coke for the period April 2000 through March 2001, falling under the Harmonized Tariff Schedules (''HTSUS'') classification 2704.00.[4] The selected data was broken down by import quantity, customs value, and CIF value. *See Petition* at 14.

For purposes of initiation, the Department has decided to rely instead on average unit values during the POI as reported under HTSUS 2704.00.0025. The Department believes that this HTS number represents a clean category under which all imports of subject coke must enter. The possibility of a misclassification by the U.S. Customs Service is not sufficient to warrant the methodology utilized by petitioners as described above. In particular, the Department does not believe that port and volume-specific import data is representative of U.S. prices of subject merchandise. As a result, as indicated above, we have relied on AUVs to calculate EP.

We obtained from the ITC's Dataweb, U.S. import values for HTS 2704.00.0025. We used the free alongside ship (''FAS'') customs values as the F.O.B. price of merchandise. For purposes of initiation, we have found this to be an appropriate estimate. We deducted estimated foreign inland freight costs from the customs value to arrive at an estimated ex-factory price for use in the comparison of EP and normal values for Japan.

Petitioners used the selected Customs Values as the FOB price of the merchandise, packaged and ready for delivery at the foreign port. To approximate ex-factory prices, petitioners deducted foreign inland freight from the selected Customs Value. *See Petition* at 14. Petitioners conservatively calculated average foreign inland freight charges using

[4] Petitioners indicate this data was obtained from the American Coal and Coke Chemicals Institute.

estimated atlas distances and Indian freight rates as a surrogate value.

Normal Value

Petitioners submitted price information regarding five Japanese domestic sales of blast furnace coke, obtained through foreign market research. In a telephone conversation with the foreign market researcher, the researcher indicated that two of the five home market transactions involved affiliated parties. *See Market Research for Japan.* We are excluding these two sales in our determination of NV because we can not determine, for purposes of initiation, whether these transactions are at ''arms-length.'' *See* Statement of Administrative Action at 827 and 19 CFR 351.403(c) of the Department's regulations.

With respect to NV, petitioners assert that sales of the subject merchandise in the Japanese home market are below the cost of production within the meaning of section 773(b) of the Act.[5] See Petition Exhibits 7 and 53. Petitioners therefore provided constructed value (''CV'') pursuant to section 773(c) of the Act. Petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of blast furnace coke in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. As noted above, petitioners obtained information regarding home market sales prices from a foreign market research company. This information demonstrates sales below COP based on petitioners' calculation as described below.

In accordance with section 773(b)(3) of the Act, the petitioner calculated the COP for the subject merchandise based on the sum of the cost of manufacturing (''COM'') and SG&A. To arrive at CV, petitioners averaged the consumption rates of two U.S. producers of subject merchandise, and adjusted for known differences based on information available regarding Japanese production processes and costs, and conservatively assumed that all Japanese coke oven gas is sold to third party consumers. With respect to the domestic price for coke oven gas in Japan, petitioners submitted information obtained from foreign market research, which included sales of coke oven gas between affiliated parties. For purposes of this initiation, we have excluded such sales from our calculation of the domestic price for coke oven gas in accordance with Department practice regarding affiliated transactions.

Petitioners calculated direct labor costs using the cost and processing times for the two U.S. producers, adjusted for known differences. Specifically, the petitioners obtained public statistical information from the *Japan Iron and Steel Federation* (''*JISF*'') (*see* Petition Exhibit 36) to adjust the U.S. producer's direct labor costs to the equivalent Japanese cost. The 1999 average monthly earnings of a Japanese worker in iron and steel industries (fringe benefits included) was divided by the average monthly hours worked. The consumer price index was used to adjust the 1999 wage rate for the POI.

Petitioners obtained public statistics from *Energy Prices & Taxes* to adjust the U.S. producers' electricity, natural gas, and steam costs to equivalent Japanese costs. Petitioners conservatively estimated the Japanese price for water to be approximately $1 per 1,000 gallons.

Petitioners used two U.S. producers' variable and fixed factory overhead costs to estimate these costs as borne by Japanese producers. Petitioner based SG&A and profit expenses on the information contained in the financial statements of six integrated Japanese steel producers with coke producing facilities. The SG&A ratio was calculated using the ratio of SG&A expenses to costs of sales. Profit was calculated using the ratio of income before taxes to the total of cost of sales and SG&A expenses. Petitioners used an average of the financial expenses of two U.S. producers' as reported in financial statements to estimate this expense as incurred by Japanese producers.

Based on the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(I) of the Act. Accordingly, the Department is initiating a country-wide cost investigation. Pursuant to section 773(a)(4), 773(b), and 773(e) of the Act, petitioners based normal value for sales in Japan on CV because sales of the subject merchandise in the home market were found to be below the cost of production. Therefore, based on these facts, for this initiation, we are accepting CV as the appropriate basis for normal value. Petitioners calculated CV using the same COM and SG&A expense figures used to calculate Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added an amount for profit to arrive at CV.

Based on the data provided by the petitioners, there is reason to believe imports of blast furnace coke from Japan are being, or are likely to be, sold at less than normal value.

Based on comparisons of NV to EP, the estimated dumping margin is 71.66 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain blast furnace coke from the PRC and Japan are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Individually, the volume of imports from China and Japan, using the latest available data, exceeded the statutory threshold of seven percent for a negligibility exclusion. Therefore, when cumulated, the volumes for these two countries also exceed the threshold. *See* section 771(24)(A)(ii) of the Act. Petitioners contend that the industry's injured condition is evidenced in the declining trends in operating profits, decreased U.S. market share, and price suppression and depression. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, domestic consumption, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.*

Initiation of Antidumping Investigations

Based on our examination of the petition on certain blast furnace coke, and the petitioners' responses to our supplemental questionnaires clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. *See Initiation Checklist.* Therefore, we are initiating antidumping duty investigations to determine whether imports of certain blast furnace coke from the PRC and Japan are being, or are likely to be, sold in the United States at less than fair

[5] In their July 11, 2001 submission, petitioners make a formal below cost of production allegation with respect to Japanese sales of subject merchandise in the home market, and also assert that exports of blast furnace coke to third countries are sold at less than the cost of production. *See* July 11, 2001 submission, at 1–2.

value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of the PRC and Japan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than August 7, 2001, whether there is a reasonable indication that imports of certain blast furnace coke products from the PRC and Japan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 19, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–18666 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Burnham Institute; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–011. *Applicant:* The Burnham Institute, La Jolla, CA 92037. *Instrument:* Brain Slice Physiology Setup. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* See notice at 66 FR 31211, June 11, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Computer control of microscope and micromanipulator positioning, (2) study of very small cells and neuronal processes over a long period of time (minutes to hours), (3) arrangement of up to seven manipulators around the microscope and (4) compatibility with existing equipment being used currently in the laboratory. The National Institutes of Health advises in its memorandum of July 2, 2001 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–18668 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Notice of Postponement of Preliminary Determination of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Michele Mire at (202) 482–5346 or (202) 482–4711, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (2001).

Background

The Department initiated this investigation on June 6, 2001, and published a notice of initiation on June 13, 2001. *See Initiation of Countervailing Duty Investigation: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India,* 66 FR 31892 (June 13, 2001). Currently, the preliminary determination is due no later than August 10, 2001.

Postponement of Preliminary Determination

Section 703(c)(1)(B) of the Act provides that a preliminary determination may be postponed until not later than 130 days after the date on which the investigation was initiated if the Department determines that the case is extraordinarily complicated and additional time is necessary to make the preliminary determination.

The Department has determined that this investigation is extraordinarily complicated due to the number and complexity of the alleged countervailable subsidy practices—both national and regional subsidy programs are alleged—and because this is the first countervailing duty investigation of the Indian PET film industry. Furthermore, additional time is required to allow the Department to analyze thoroughly the responses to its countervailing duty questionnaire, as well as issue a supplemental questionnaire.

Accordingly, pursuant to sections 703(c)(1)(B)(i)(I), 703(c)(1)(B)(i)(II), and 703(c)(1)(B)(ii) of the Act and the Department's regulations at 19 CFR 351.205(b)(2), we are postponing the preliminary determination until not later than Monday, October 15, 2001, which is 130 days after the date of initiation.

This notice is published in accordance with section 703(c)(2) of the Act and 19 CFR 351.205(f)(1) of the Department's regulations.

Dated: July 19, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–18667 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072301A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Shrimp Advisory Panel (AP) and the Standing and Special Shrimp Scientific and Statistical Committee (SSC).

DATES: The AP will meet on August 13, 2001, beginning at 8:30 a.m. and will conclude by 2:30 p.m. The SSC will meet on August 13, 2001, beginning at 3 p.m. and will conclude by 5 p.m.

ADDRESSES: The meetings will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, Louisiana; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: The SSC and AP will meet to review and Draft Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters with Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Social Impact Assessment. This amendment contains alternatives for requiring additional measures to reduce bycatch in the shrimp fishery on the west coast of Florida, south and east of Cape San Blas (85°30' W. long.) Measures being considered include area and/or seasonal closures, as well as requiring bycatch reduction devices.

Although other non-emergency issues not on the agenda may come before the SSC/AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SSC/AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 7, 2001.

Dated: July 23, 2001.

Theophilus Brainerd,

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

[FR Doc. 01–18670 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071801E]

Endangered Species; Permits

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

ACTION: Issuance of permit 1316; Issuance of modification #1 to permit 1299; and amendment #2 to permit 1133.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1316 to Dr. Jeff Schmid, of The Conservancy of Southwest Florida; NMFS has issued modification ι1 to permit #1299 to Dr. Raymond Carthy, of the Florida Cooperative Fish & Wildlife Research Unit; and NMFS has issued amendment ι2 to permit #1133 to Dr. Andre Landry of Texas A&M University at Galveston.

ADDRESSES: The permits, applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened Loggerhead turtle (*Caretta caretta*)

Permits, Modified Permits and Amended Permits Issued

Permit #1316

Notice was published on May 21, 2001 (66 FR 27940), that Dr. Jeff Schmid, Conservancy of Southwest Florida applied for a scientific research permit (1316). The goal of this research is to characterize the essential habitat associations of subadult Kemp's ridley turtles in the nearshore waters of the upper Ten Thousand Islands. The objectives are: (1) to monitor the movements of Kemp's ridley turtles via radio and sonic telemetry and to quantify their habitat utilization from the geographical position data, (2) to produce a geographic information system (GIS) database of benthic habitats and subsequently map the habitat types within the study area, and (3) to test for habitat preferences of Kemp's ridley turtles in this region by comparing the amount of time a turtle spends in a given habitat relative to the availability of all other habitat types. Permit 1316 authorizes the non-lethal take of 20 Kemp's ridley turtle. After capture, the turtles will be handled, measured, flipper and PIT tagged, have a radio/sonic transmitter attached and be released near the capture site. Permit 1316 was issued on July 19, 2001, and expires July 31, 2006.

Permit #1299

Dr. Raymond Carthy, of the Florida Cooperative Fish & Wildlife Research

Unit currently possesses a 3–year scientific research permit to non-lethally take up to 100 loggerhead, 100 green, and 100 Kemp's ridley sea turtles annually from St. Joseph Bay, Florida. Under permit #1299, Dr. Carthy is authorized to examine the internesting movements and habitat usage of adult loggerhead turtles along the northwestern coast of Florida, while also examining species composition, population densities and habitat utilization in coastal bays in the same area. Activities currently authorized under permit #1299 are: capture of turtles in tended, straight-set, large-mesh tangle nets. After capture turtles are weighed, measured, photographed, and flipper and PIT tagged, have a tissue sample collected and be released.

For modification #1, the permit holder is authorized to attach a time/depth recorder and a sonic/radio transmitter to a maximum of 3 green or loggerhead turtles (in aggregate) over the life of the permit. Modification #1 to Permit 1198 was issued on July 17, 2001, and expires December 31, 2003.

Permit #1133

Andre M. Landry currently possesses a 5–year scientific research permit to take listed sea turtles for the purpose of conducting studies on population status and recovery potential, habitat preference, movement and migration, foraging patterns, and impact of man's activities such as commercial and recreational fishing, dredging and habitat alteration/pollution. Dr. Landry is currently authorized to non-lethally take endangered green, Kemp's ridley and hawksbill and threatened loggerhead turtles annually from locations within the Western Gulf of Mexico, through the use of entanglement nets.

Due to a recent incidental mortality associated with the research, NMFS has amended permit 1133 to add a special condition to reduce the likelihood of additional mortalities associated with research activities in the Gulf of Mexico. Amendment #2 to Permit 1133 was issued on July 19, 2001, authorizing the continued non-lethal take of 100 green, 200 Kemp's ridley, 100 loggerhead and 20 hawksbill turtles annually. Permit 1133 expires January 31, 2003.

Dated: July 20, 2001.

Donna Brewer,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–18671 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

July 20, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69914, published on November 21, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 20, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on July 26, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevel within Fabric Group	
620	9,360,103 square meters.
Other specific limits	
200	379,289 kilograms.
300/301	4,043,926 kilograms.
331/631	2,799,960 dozen pairs.
333/334/335/835	356,419 dozen of which not more than 213,851 dozen shall be in Category 333 and not more than 213,851 dozen shall be in Category 835.
336/636	642,274 dozen.
338/339	1,545,593 dozen.
340/640	1,998,350 dozen.
342/642/842	620,346 dozen.
347/348	655,025 dozen.
350/650	223,721 dozen.
435	17,894 dozen.
438–W [2]	14,644 dozen.
445/446	34,614 dozen.
604	1,914,277 kilograms.
634/635	1,208,800 dozen.
638/639	701,609 dozen.
647/648	2,309,009 dozen of which not more than 1,616,304 dozen shall be in Category 647–K [3] and not more than 1,616,304 dozen shall be in Category 648–K [4].
Group II	
201, 222–224, 239pt. [5], 332, 352, 359pt. [6], 360–362, 369pt. [7], 400–431, 433, 434, 436, 438–O [8], 440, 443, 444, 447, 448, 459pt. [9], 464, 469pt. [10], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [11], 666, 669pt. [12], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [13], as a group.	57,862,540 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[8] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[9] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[10] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[11] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[12] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[13] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–18636 Filed 7–25–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–21]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–21 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2001
In reply refer to:
I-01/006663

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-21, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $617 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Singapore**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$342 million
Other	$275 million
TOTAL	$617 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Twelve AH-64D Apache attack helicopters (excluding AH-64D Longbow Fire Control Radar), six spare T-700-GE-701C engines, four HELLFIRE II Semi-Active Laser Training missiles, 28 spare HELLFIRE II launchers two spare Target Acquisition Designation Sight Systems, M267 and M274 rockets, 30mm Training Practice rounds, spare and repair parts, communications equipment, support equipment, tools and test sets, munitions, devices, chaff dispensers, Integrated Helmet and Display Sight System, 30mm cartridges, electronic equipment test facility spares, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical support and other related elements of logistics support.**

(iv) **Military Department: Army (VAQ, Amendment 3)**

(v) **Prior Related Cases, if any: FMS case VAQ - $399 million - 26Feb99**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 10 JUL 2001**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Singapore - AH-64D Apache Attack Helicopters

The Government of Singapore has requested a possible sale of 12 AH-64D Apache attack helicopters (excluding AH-64D Longbow Fire Control Radar), six spare T-700-GE-701C engines, four HELLFIRE II Semi-Active Laser Training missiles, 28 spare HELLFIRE II launchers two spare Target Acquisition Designation Sight Systems, M267 and M274 rockets, 30mm Training Practice rounds, spare and repair parts, communications equipment, support equipment, tools and test sets, munitions, devices, chaff dispensers, Integrated Helmet and Display Sight System, 30mm cartridges, electronic equipment test facility spares, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $617 million.

This notification does not contain the AH-64D Longbow Fire Control Radar. Any future sale of the Longbow Fire Control Radar to Singapore will be notified via 36(b)5 notification.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for stability and economic progress in Southeast Asia.

Singapore desires these articles to fulfill their commitments to self-defense and self-reliance. The sale will contribute to our foreign policy and security objectives by providing a credible defensive capability to a key regional friend. Singapore will have no difficulty absorbing these helicopters into its armed forces.

The principal contractors are: Boeing-Mesa, Mesa, Arizona; Lockheed Martin Electronics and Missiles, Orlando, Florida; Lockheed Martin Federal Systems, Incorporated, Owego, New York; and General Electric, Lynn, Massachusetts. There are no proposed offset agreements related to this proposed sale.

Implementation of this proposed sale will require the assignment of several U.S. Government Quality Assurance Teams and technicians involved in training. There will be 10 U.S. Government and four contractor representatives for two-week intervals twice annually to participate in program management and technical review in Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D Apache Attack Helicopter includes the following classified or sensitive components:

a. M130 Chaff-flare Dispenser - a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for authorized maintenance levels are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

b. AN/ALQ-144A(V)3 Infrared Countermeasure Set - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

c. AN/APR-39A(V)3 Radar Warning Receiver - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with appropriate threat data. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret.

d. AN/ALQ-136(V)5 Radar Jammer Countermeasure Sets - an omni-directional radar jammer which provides protection against threat radar detecting devices. Equipment is programmed with appropriate threat data provided by purchasing country. Hardware is classified Confidential. Releasable technical manuals for the maintenance are classified Secret; releasable technical performance data is classified Secret. Technology involved in design, manufacturing and testing of the jammer is sensitive. Reverse engineering is a primary concern.

e. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

f. The AGM-114 (K-3) HELLFIRE air-to-surface laser missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

g. AN/AVR-2A(V) Laser Warning Set is a passive laser warning system which receives, processes and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified Confidential. Technical manuals for operation and maintenance levels are classified Secret.

2. This sale is consistent with the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 01–18603 Filed 7–25–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–13]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: None.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 144–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–13 with attached transmittal, policy justification, Sensitivity of Technology, and Section 620(C)(d) of the Foreign Assistance Act of 1961.

Dated: July 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 JUL 2001
In reply refer to:
I-01/005337

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-13, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $28 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Tome H Walters Jr

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Turkey**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$25 million
Other	$ 3 million
TOTAL	$28 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: One FFG-7 OLIVER HAZARD PERRY class guided missile frigate ex-FLATLEY (FFG-21), one MK 15 MOD 0 Close-In Weapons Systems, one MK 15 MOD 0 76mm gun mount, one MK 13 MOD 4 guided missile launch system, sonobuoys and other related ammunition items, and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational.**

(iv) **Military Department: Navy (SCU and BIV)**

(v) **Prior Related Cases, if any:**

FMS case SCS	$ 28 million	26May00
FMS case SCP	$ 98 million	4Jan99
FMS case SBG	$ 8 million	25Mar98
FMS case SBF	$116 million	25Mar98

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 10 JUL 2001**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Turkey - FFG-7 PERRY Class Guided Missile Frigate

The Government of Turkey has requested a possible combined lease/sale arrangement of one FFG-7 OLIVER HAZARD PERRY class guided missile frigate ex-FLATLEY (FFG-21), one MK 15 MOD 0 Close-in Weapons Systems, one MK 15 MOD 0 76mm gun mount, one MK 13 MOD 4 guided missile launch system, sonobuoys and other related ammunition items, and other elements of logistics necessary to prepare the frigates for transfer to Turkey in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $28 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey, while enhancing weapon system standardization and interoperability.

Turkey already has seven U.S. Navy PERRY class frigates in its Navy fleet. Turkey needs these frigates to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The frigates will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The PERRY vessel will be transferred on a "hot ship" basis. The primary effort for transfer will be completed through the Naval Sea Systems Command. There are no prime contractors for provision of the weapon systems applicable to this platform. There are no offset agreements proposed in connection with this potential sale.

The U.S. Government and contractor technical and logistics in-country personnel requirements will be determined following consultations with representatives of the Turkish navy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-13

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. Select maintenance and operation publications are also classified Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Turkey can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-100) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the furnishing to Turkey of one excess OLIVER HAZARD PERRY Class Guided Missile Frigate, one MK 15 MOD 0 close-in weapons systems, one MK 15 MOD 0 76mm gun mount, one MK 13 MOD 4 guided missile launch system, sonobouys and other related ammunition, and elements of logistics support necessary to transfer the frigate to Turkey in a "safe to steam" condition with all shipboard and weapons systems operational is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John R. Bolton
Under Secretary of State
for Arms Control and
International Security Affairs

[FR Doc. 01–18604 Filed 7–25–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee

ACTION: Notice.

SUMMARY: The ARMS Executive Advisory Committee (hereinafter referred to as ARMS EAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, The ''Federal Advisory Committee Act.'' The ARMS EAC is authorized to be established in the Conference Report accompanying Pub.L. 102–484, the National Defense Authorization Act for Fiscal Year 1993. Section 193 of the Authorization Act directs the Secretary of the Army to carry out an ARMS initiative which encourages commercial firms to use government-owned-contractor-operated (GOCO) manufacturing facilities of the DoD for commercial purposes.

The ARMS EAC provides a communications forum whereby a distinguished group of both industry and government experts advise the Secretary of the Army concerning changing roles for GOCO Army ammunition plants. In studying the objectives of the ARMS initiative, the ARMS EAC reviews and makes recommendations regarding the Army plan for implementation. Specific tasks include: assessing government and industry expectations for the ARMS initiative; evaluating the incentives, *e.g.,* marketing, use of facilities and equipment, loan guarantees, planning grants, environmental concerns, free trade zones, for utilizing the idle capacity at industrial facilities for the manufacturing of government and commercial products; reviewing existing laws, regulations, and policies as to adequacy and possible need for revision or expansion; and, gauging the Army's plans for plant utilization, disposal of excess plant equipment, and allowance for contingencies.

The ARMS EAC will continue to be comprised of approximately sixteen members, eight from the private sector and eight from government, who will be acknowledged experts and leaders in the diverse disciplines associated with industrial plant operations and processes. The common characteristic of the issues they will study is the management of change in the Army's ammunition industrial base. Consequently, the individuals selected to serve on the Committee will be accomplished in their ability to understand and manage change at the manufacturing level and have considerable experience in tooling processes to retain a viable ammunition production base alongside commercial ventures/products. Efforts will be made to ensure that the membership is well-balanced in terms of the functions to be performed and the interest groups represented.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Gary Eichorn, telephone: 309–782–4360 or Mr. John Kasper, telephone: 703–697–3055.

Dated: July 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–18601 Filed 7–25–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra Burrell, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarter Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed in the Office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 2001.

Office of the Secretary of Defense

Chairperson: Cheryl J. Roby
Ralph W. Alewine III
Timothy Arnold
Allen W. Beckett
Diana L. Blundell
Thomas Brunk
Jennifer Buck
Carol F. Covey
Paul Dempsey
Jim Dominy
Bob Dorosz
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Al Gallant
John Gehrig
Paul Koffsky
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Anthony R. Grieco
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Judith Hughes
Michael Ioffredo
Bryan C. Jack
Clarence C. Juhl
Michael Kilpatrick
Paul S. Koffsky
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John R. Landon
Deidre A. Lee
J. Allen Liotta
George B. Lotz II
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Henry McIntyre
John McGowan
David L. McNicol
Patrick Meehan
Timothy Morgan
Ronald Mutzelburg
Robert A. Nemetz
Ralph Newton
James O' Bryon
James Reardon
Ann Reese
Ronald G. Richards
Alina L. Romanowski
Vincent Roske
Edward Ross
Patricia Sanders
Kenneth C. Scheflen
Harry Schulte
Susan Shekmar
Henry R. Sodano
Robert Taylor
Gerald Thomas
Mary Tompkey
Alfred Volkman

Dated: July 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–18602 Filed 7–25–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of 2001 Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Secretariat

Mr. Roger M. Blanchard
Mr. Arthur J. Coleman, Jr.
Brig. Gen. Walter Jones
Mr. James A. Papa
Ms. Barbara A. Westgate
Mr. Harlan G. Wilder
Mr. James B. Engle

Air Staff and ''Others''

Mr. James R. Speer
Ms. Christine M. Anderson
Mr. Timothy A. Beyland
Ms. Debra L. Haley
Mr. James E. Short
Mr. Jimmy G. Dishner
Mr. Kenneth E. Gregory

Air Force Materiel Command

Lt. Gen. Charles Coolidge
Mr. Ronald L. Orr
Dr. Donald C. Daniel
Brig. Gen. David Canaan
Ms. Judy A. Stokely

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–18660 Filed 7–25–01; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning System and Method for Predicting Human Cognitive Performance Using Data From an Actigraph

AGENCY: U.S. Army Medical Research and Material Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. 6,241,686 entitled ''System and Method for Predicting Human Cognitive Performance Using Data From an Actigraph'' and issued June 5, 2001. Foreign rights are also available (PCT/US99/20104). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A system and a method for providing a determination of predicted cognitive performance of an individual based on the time of day and on factors including sleep history based on activity data from an actigraph. The system and the method provide a numerical representation of the predicted cognitive performance. Both may be used to optimize the work schedule of the actigraph wearer to maximize the cognitive capacity during working hours.

Elizabeth Arwine,

Patent Attorney.

[FR Doc. 01–18589 Filed 7–25–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending three systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 27, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in there entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0215–2b CFSC

SYSTEM NAME:

Commercial Entertainment Transaction Records (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 215–1, Moral Welfare, and Recreation Activities and Non appropriated Fund Instrumentalities; and E.O. 9397 (SSN).''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Offices having Army-wide responsibility maintain records for 10 years then destroy. Offices not having Army-wide responsibility destroy after 2 years.'

* * * * *

A0215–2b CFSC

SYSTEM NAME:

Commercial Entertainment Transaction Records.

SYSTEM LOCATION:

Installation and area clubs; other membership associations, non-appropriated fund activities and instrumentalities; Armed Forces recreation centers throughout the Army; United States Army Europe and Korea commercial/entertainment offices. Address may be obtained from the Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual performers, members of entertainment groups or their agents who may be members of the United States Forces and/or their dependents, civilian components of U.S. Forces and/or their dependents, and other U.S. citizens or foreign nationals.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name of individual or group, Social Security Number of individual, type of entertainment, passport number, nationality, location of performances, agent code, performance/band information, fees charged, payment records, individual contract number, performance information and date, and code of the non-appropriated fund activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 215–1, Moral Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; and E.O. 9397 (SSN).

PURPOSE(S):

To register individual/group entertainers appearing at non-appropriated fund activities or instrumentalities, clubs, associations or recreation centers; to issue pay and supporting documents incident to contract for such entertainers; to account for monies of open messes and clubs for entertainment purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards, magnetic tapes and discs, and computer printouts.

RETRIEVABILITY:

By Social Security Number, agent code or band code.

SAFEGUARDS:

Buildings housing records employ security guards. Paper files, computer cards, and printouts are stored in areas accessible only to authorized personnel; offices and buildings are locked during non-duty hours. Access to computer is limited to individuals who are properly cleared and trained.

RETENTION AND DISPOSAL:

Offices having Army-wide responsibility maintain records for 10 years then destroy. Offices not having Army-wide responsibility destroy after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, Summit, 4700 King Street, Alexandria, VA 22331–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Community and Family Support Center, Summit, 4700 King Street, Alexandria, VA 22331–0500.

Individual should provide full name of the individual, agent code (if applicable), Social Security Number and/or passport number, and the time period and performance date involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Community and Family Support Center, Summit, 4700 King Street, Alexandria, VA 22331–0500.

Individual should provide full name of the individual, agent code (if applicable), Social Security Number and/or passport number, and the time period and performance date involved.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual entertainer and agent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8a TAPC

SYSTEM NAME:

Major Command Military Personnel Management Reporting System (December 23, 1997, 62 FR 67055).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8aDAPE'.

SYSTEM LOCATION:

Delete entry and replace with 'Decentralized to each major Army command. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.''

* * * * *

STORAGE:

Delete entry and replace with 'Microfiche, printouts and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with 'By Social Security Number, name, MOS and grade.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Offices having Army-wide responsibility: Cut off annually, hold for 1 year in current file area, retire to Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, destroy 25 years after cutoff. Reporting organizations and strength monitors at installations and major commands destroy after 2 years; offices not within the above categories destroy when no longer needed for current operations.''

* * * * *

A0600–8aDAPE

SYSTEM NAME:

Major Command Military Personnel Management Reporting System.

SYSTEM LOCATION:

Decentralized to each major Army command. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty commissioned officers, warrant officers and enlisted personnel assigned or projected for assignment to the major command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race; marital status and dependents; physical category code; component; expiration of term of service; additional pay; date of rank; annual efficiency index; last overseas short tour, procurement actions; unit identification code; Department of Army location, assignment and status codes; permanent

change of station date; date joined/departed current command; gaining unit, location, assignment and status codes; reporting date; date returned from overseas; previous unit identification code, assignment and type transfer strength; primary and secondary military occupational specialties (MOS), secondary MOS evaluation score; duty MOS; away without leave data; date agreements and related documents forms, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–6, Personnel Accounting and Strength Reporting; Army Regulation 600–8, Military Personnel Management; and E.O. 9397 (SSN).

PURPOSE(S):

This system extracts data from Officer and Enlisted Personnel Files and records related to organizations, personnel authorized and assigned strength and prepares reports designed to aid major Army commanders in managing military personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, printouts and electronic storage media.

RETRIEVABILITY:

By Social Security Number, name, MOS and grade.

SAFEGUARDS:

Records are protected by physical security devices, computer hardware and software safeguard features, and personnel clearances for individuals working with the system.

RETENTION AND DISPOSAL:

Offices having Army-wide responsibility: Cut off annually, hold for 1 year in current file area, retire to Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, destroy 25 years after cutoff. Reporting organizations and strength monitors at installations and major commands destroy after 2 years; offices not within the above categories destroy when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From automated systems interfaces based on the Headquarters, Department of Army data base.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0715 DAJA

SYSTEM NAME:

Procurement Misconduct Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'United States Army Legal Services Agency, Procurement Fraud Division, 901 North Stuart Street, Arlington, VA 22203–1837.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 48 CFR Chapter 2, Defense Federal Acquisition Regulations; Federal Acquisition Regulations 9.406–3; DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities; Army Regulation 27–40, Chapter 8, Litigation, Remedies in Procurement Fraud and Corruption; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and electronic storage database.'

RETRIEVABILITY:

Delete entry and replace with 'By Social Security Number, names and procurement fraud case number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'United States Army Legal Services Agency, Office of The Judge Advocate General and Headquarters, United States Army Corps of Engineers civil work cases, destroy after 30 years. Except those cases heard by the Supreme Court or designated by the Judge Advocate General or Headquarters, United States Corps of Engineers Chief Counsel as significant which are permanent, cut off on completion of litigation. United States Army Legal Services Agency, Office of The Judge Advocate General and Headquarters United States Army Corps of Engineers cases not involving litigation, destroy 10 years after date of incident. Procurement misconduct files are maintained for 30 years after final determination then destroyed.'

* * * * *

A0715 DAJA

SYSTEM NAME:

Procurement Misconduct Files.

SYSTEM LOCATION:

United States Army Legal Services Agency, Procurement Fraud Division, 901 North Stuart Street, Arlington, VA 22203–1837.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or legal entities investigated for alleged procurement misconduct, such as fraudulent activities in securing or performing a government contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal and administrative investigations of fraudulent, criminal or other misconduct in connection with government procurement activities and the List of Parties Excluded from Procurement Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 48 CFR Chapter 2, Defense Federal Acquisition Regulations; Federal Acquisition Regulations 9.406–3; DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities; Army Regulation 27–40, Chapter 8, Litigation, Remedies in Procurement Fraud and Corruption; and E.O. 9397 (SSN).

PURPOSE(S):

To determine whether criminal, administrative, or civil proceedings should be initiated against the contractor with the government or government procurement officials for criminal conduct in connection with procurement activities and to maintain and distribute a list of contractors determined to be ineligible to participate in Government procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice and United States attorneys.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage database.

RETRIEVABILITY:

By Social Security Number, names and procurement fraud case number.

SAFEGUARDS:

Records are maintained in file cabinets accessible only by authorized personnel who are properly instructed in the permissible use of the information in the performance of their duties.

RETENTION AND DISPOSAL:

United States Army Legal Services Agency, Office of The Judge Advocate General and Headquarters, United States Army Corps of Engineers civil work cases, destroy after 30 years. Except those cases heard by the Supreme Court or designated by the Judge Advocate General or Headquarters, United States Corps of Engineers Chief Counsel as significant which are permanent, cut off on completion of litigation. United States Army Legal Services Agency, Office of The Judge Advocate General and Headquarters United States Army Corps of Engineers cases not involving litigation, destroy 10 years after date of incident. Procurement misconduct files are maintained for 30 years after final determination then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

United States Army Legal Services Agency, Chief Procurement Fraud Division, 901 North Stuart Street, Arlington, VA 22203–1837.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Office of the United States Army Legal Services Agency, Chief Procurement Fraud Division, 901 North Stuart Street, Arlington, VA 22203–1837.

Individual should provide full name, current address and telephone number, specific details that will enable locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address inquiries to the United States Army Legal Services Agency, Chief Procurement Fraud Division, 901 North Stuart Street, Arlington, VA 22203–1837.

Individual should provide full name, current address and telephone number, specific details that will enable locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of the Army staff agencies, Army records and reports, Department of Justice, U.S. Attorneys, opposing counsel, and similar relevant sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–18605 Filed 7–25–01; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Title VI Land Transfer to the State of South Dakota

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act and implementing regulations, an Environmental Impact Statement (EIS) has been prepared to evaluate the environmental impacts of a transfer of approximately 91,178 acres of recreation lands and other lands from the Army Corps of Engineers to the State of South Dakota. As a result of the legislation of the Water Resources Development Act (WRDA) Pub. L. 106–53, August 17, 1999, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, and State of South Dakota Terrestrial Wildlife Habitat Restoration Act, as amended by Pub. L. 106–541, December 11, 2000, WRDA 2000, the Secretary of the Army is required to transfer certain lands and recreation areas at Lake Oahe, Lake Sharpe, Lewis & Clark Lake and Lake Francis Case in South Dakota to the Department of Game, Fish & Parks of the State of South Dakota (SDGFP) for fish and wildlife purposes, or recreation uses, in perpetuity.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS can be addressed to Patsy Freeman, U.S. Army Corps of Engineers, 106 South 16th Street, Omaha, Nebraska 68102, telephone at (402) 221–3803, or E–Mail: *patricia.l.freeman@usace.army.mil*

SUPPLEMENTARY INFORMATION: The legislation requires the transfer in fee title of Corps of Engineers lands (outside the boundaries of Indian reservations) above the top of the exclusive flood pools at Oahe, Big Bend, Fort Randall and Gavins Point dam/reservoir projects in the State of South Dakota to the SDGFP. The technical amendments (P.L. 106–54) also require that with certain exceptions, the recreation areas on Corps lands at the 4 projects in South Dakota outside of reservation boundaries be transferred to the State no later than January 1, 2002. Of the 123 recreation areas around the four reservoirs within the state, 63 would transfer to the state, 9 would be leased in perpetuity to the state, and 51 are either on reservation lands or outside the state of South Dakota and therefore would not be affected by this action.

The purpose of and need for this proposed action is simply to comply with the Congressional mandate of transferring the lands to the SDGFP. Although NEPA documents normally assist the decision maker, this document is only prepared for the purpose of public disclosure of the environmental impacts of the land transfer, since there is no Federal decision to be made.

The State of South Dakota has provided to the Corps its plans for development and management at the recreation areas to be transferred. These plans have been used to evaluate potential environmental, cultural, and socioeconomic impacts that would be expected to occur as a result of the transfer. In addition, the legislation provides funds to the State and two Tribes for the implementation of plans for terrestrial wildlife habitat restoration. The Corps will consult with the State of South Dakota and affected Indian Tribes to develop annual budget to carry out this title. The State's plan includes habitat development on Oahe/Sharpe project lands, on Federal lands and on selected State lands. Total habitat development proposed is 25,620 acres.

Amendments contained in the WRDA 2000 also stated that within 10 years the Secretary shall clean up open dumps and hazardous waste sites located on lands transferred and leased, inventory and stabilize each cultural and historical site within transferred or leased lands, and establish a Cultural Resources Advisory Commission (CRAC) composed of 1 member each from the State of South Dakota, Cheyenne River Sioux Tribe, and the Lower Brule Sioux Tribe.

The no-action alternative traditionally describes what would happen if the proposed action were *not* to occur. Although the no-action alternative is not a reasonable alternative because Congress has mandated the transfer of these properties, it is being addressed in the EIS as required by CEQ regulations (40 CFR 1502.14) and to provide a baseline against which to measure the impacts of the State's proposed development on the lands to be transferred.

Public Meetings

Public meetings to obtain comments on the Draft EIS will be held August 13–August 23, 2001. Corps representatives will be available to answer questions at an informal ''open house'' beginning at 5 p.m. The formal meetings begin at 7 p.m. at the following locations:

- Monday, August 13, 2001; Best Western Kelly Inn, 1607 East Highway 50, Yankton, SD 57078.
- Tuesday, August 14, 2001; Lower Brule Convention Center, 321 Sitting Bull Street, Lower Brule, SD 57548.
- Wednesday, August 15, 2001; Crow Creek Reservation Com. Center, Fort Thompson, SD 57339.
- Thursday, August 16, 2001; National Guard Armory, 610 East Hwy 50, Wagner, SD 57380.
- Monday, August 20, 2001; Prairie Nights Casino, 7932 Highway 24, Fort Yates, ND.
- Tuesday, August 21, 2001; Wrangler Motor Inn, 800 West Grand Crossing, Mobridge, SD 57601.
- Wednesday, August 22, 2001; King's Inn, 220 South Pierre Street, Pierre, SD 57501.
- Thursday, August 23, 2001; Rushmore Plaza Holiday Inn, 505 North 5th Street, Rapid City, SD 57701.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18588 Filed 7–25–01; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement (EIS) on Drought Water Management Operations of the Central and Southern Florida (C&SF) Project During 2002

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: There is currently a severe water shortage and regional drought within the Central and Southern Florida (C&SF) Project area in south Florida that is forecast to extend into 2002. As a result of this, the South Florida Water Management District (SFWMD), the local sponsor of the project, has requested that the Jacksonville District of the U.S. Army Corps of Engineers (Corps) authorize temporary deviation from the normal regulation schedules for the Water Conservation Areas (WCA's), set forth in the Water Control Plan for the 2001/2002 dry season to provide greater flexibility in balancing the environmental and water supply purposes of the project. The current water management operational plan for the C&SF Project includes drought contingency plans. The magnitude and severity of this water shortage and drought pose an unprecedented threat to drinking water supplies, economic and social resources and environmental resources, primarily due to the extremely low water levels in Lake Okeechobee, the normal backup water supply for the region. Based on current water levels and projections for continued low lake levels, the potential for saltwater intrusion into the Lower East Coast water supplies if backup water supplies are not available and the potential for environmental impacts in the regional system, require evaluation of the temporary deviation from the minimum floor elevations in the WCA's.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232; Attn: Ms. Barbara Cintron, 904/232–1682.

SUPPLEMENTARY INFORMATION:

1. The action requested by the SFWMD consists of temporary deviations to the water regulation schedules for WCA 1 (ARM Loxahatchee National Wildlife Refuge), WCA 2A, and WCA 3A from November 1, 2001 through October 31, 2002.

2. Alternatives to be discussed involve sequencing the deviations for the several WCAs, and variations in the magnitude and timing of the deviations.

3. A Scoping letter will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

4. The Draft EIS will analyze issues related to fire frequency, wading bird and snail kite nesting success, invasion of exotic vegetation, saltwater intrusion into municipal drinking water wells, the benefits of and need for municipal and industrial water-use restrictions, and economic and social impacts on agriculture and other water supply dependent business, including recreation, navigation, and tourism.

5. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, and Farmland Protection Policy Act.

6. The Draft EIS is expected to be available for public review in the 3rd quarter CY 2001.

Dated: July 19, 2001.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 01–18590 Filed 7–25–01; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.033]

Student Financial Assistance, Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for submission of the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice that institutions in the campus-based programs (Federal Perkins Loan Program, Federal Work-Study (FWS) Programs, and Federal Supplemental Opportunity Grant Program) that wish to return any unused 2000–2001 Federal funds or wish to request supplemental 2001–2002 FWS funds for community service must submit the Campus-Based Reallocation Form prior to midnight, Eastern time, on August 24, 2001, via the Department's Student Aid Internet Gateway (formerly Title IV Wide Area Network or Title IV WAN). The information collected on the Campus-Based Reallocation Form is used to determine the Federal funds available for supplemental awards and the campus-based institutions that are eligible and wish to receive supplemental 2001–2002 FWS funds for community service.

DATES: *Closing Date and Method for Submitting a Campus-Based Reallocation Form.* Institutions in the campus-based programs that wish to return any unused 2000–2001 Federal funds or wish to request supplemental 2001–2002 FWS funds for community service must submit the Campus-Based Reallocation Form prior to midnight, Eastern time, on August 24, 2001, via the Department's Student Aid Internet Gateway.

The Campus-Based Reallocation Form is located in the Fiscal Operations Report for 2000–2001 and Application to Participate for 2002–2003 (FISAP) software that is available for download at: *www.sfadownload.ed.gov.*

Additional information about the reallocation process is provided in a ''Dear Partner'' letter that is available at: *www.ifap.ed.gov.*

SUPPLEMENTARY INFORMATION: We will reallocate unexpended Federal funds from the 2000–2001 award year as supplemental allocations for the 2001–2002 award year under all of the campus-based programs. Supplemental allocations will be issued this fall in accordance with the reallocation procedures in the Higher Education Act of 1965, as amended (HEA). Under section 442(d) of the HEA, unexpended FWS Federal funds returned to the Secretary must be reallocated to eligible institutions that used at least 5 percent of the total 2000–2001 FWS Federal funds granted to the institution to compensate students employed as reading tutors of children or in family literacy activities as part of its community services activities. Because reallocated FWS Federal funds will be distributed on the basis of fair share shortfall criteria, you also must have a fair share shortfall to receive these funds. A fair share shortfall means that you have an unmet need for FWS funds as determined by the FWS allocation formula in the HEA that uses data reported on the FISAP. You must use all of the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS funds for the 2001–2002 award year, you must submit the Campus-Based Reallocation Form data by August 24, 2001, via the Department's Student Aid Internet Gateway.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Campus-Based Operations, Schools Channel, U.S. Department of Education, Portals Building, Suite 600D, 1250 Maryland Avenue, SW., Washington, DC 20202–5453. Telephone (202) 708–7741. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) by contacting the Alternative Format Center, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–4560. Telephone (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 42 U.S.C. 2752.

Dated: July 20, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 01–18611 Filed 7–25–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revision and three-year extension of the surveys included in the Coal Program Package. The surveys covered by this action are the Form EIA–1, ''Weekly Coal Monitoring Report—General Industries and Blast Furnaces'' (Standby); Form EIA–3, ''Quarterly Coal Consumption Report—Manufacturing Plants;'' Form EIA–3A, ''Annual Coal Quality Report—Manufacturing Plants;'' Form EIA–4,

''Weekly Coal Monitoring Report—Coke Plants'' (Standby); Form EIA–5, ''Quarterly Coal Consumption Report—Coke Plants;'' Form EIA–5A, ''Annual Coal Quality Report—Coke Plants;'' Form EIA–6, ''Coal Distribution Report;'' Form EIA–6 (Schedule Q), ''Quarterly Coal Report'' (Standby); Form EIA–7A, ''Coal Production Report;'' and Form EIA–20, ''Weekly Telephone Survey of Coal Burning Utilities'' (Standby). The Standby forms are designed to be utilized under certain conditions.

DATES: Comments must be filed on or before September 24, 2001. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to William Watson, Coal, Nuclear, and Renewables Division, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Watson may be reached at *william.watson@eia.doe.gov* (e-mail), 202–287–1971 (telephone), or 202–287–1934 (FAX).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to William Watson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(a) of the Paperwork Reduction Act of 1995.

The coal surveys included in the Coal Program Package collect information on coal production, distribution, receipts, consumption, quality, stocks, and prices. This information is used to support public policy analyses of the coal industry and is published in various EIA publications, including the Coal Industry Annual, the Annual Energy Review, the Monthly Energy Review, and the Quarterly Coal Report. Respondents to the surveys include coal producers, coal distributors, and coal consumers.

II. Current Actions

The EIA will request a 3-year extension of the collection authority for each of the above-referenced surveys. Additionally, the EIA proposes the following changes affecting Form EIA–3, Form EIA–3A, Form EIA–5, Form EIA–5A, and Form EIA–7A.

Form EIA–3, ''Quarterly Coal Consumption Report—Manufacturing Plants;'' and Form EIA–3A, ''Annual Coal Quality Report—Manufacturing Plants''

Currently, EIA surveys manufacturing plants to collect coal consumption and coal stocks data on a quarterly basis (Form EIA–3), and coal quality data and coal origin on an annual basis (Form EIA–3A). EIA proposes to eliminate the EIA–3A survey and instead modify the EIA–3 quarterly survey to include questions on coal quality and origin, but eliminate reporting the basis of coal quality data. EIA proposes to also add mode of coal transport to the EIA–3 quarterly survey. EIA believes that the proposed changes would make it easier for the respondents to complete the surveys.

EIA proposes to change the title of the EIA–3 survey form from ''Quarterly Coal Consumption Report—Manufacturing Plants'' to ''Quarterly Coal Consumption and Quality Report, Manufacturing Plants.''

The instructions in Form EIA–3, in Section B, Who Must Submit, will be amended to state that synfuel facilities using coal as an input are among the facilities required to complete form EIA–3.

EIA proposes to delete the question asking for the basis for coal quality information, in section III. Basis of Coal Quality, now included on the EIA–3A form. EIA believes that the information is not needed because it is not published, disseminated on the internet, nor used within EIA for analysis.

Form EIA–5, ''Quarterly Coal Consumption Report—Coke Plants;'' and Form EIA–5A, ''Annual Coal Quality Report—Coke Plants''

Currently, EIA surveys coke plants to collect consumption and stocks data for coal and production and stocks data for coke on a quarterly basis (Form EIA–5), and coal quality data and coal origin on an annual basis (Form EIA–5A). EIA proposes to eliminate the EIA–5A survey and to modify the EIA–5 quarterly survey to include questions on coal quality and origin, but eliminate reporting the basis of coal quality data. EIA proposes to also add mode of coal transport to the EIA–5 quarterly survey. EIA believes that the proposed changes would make it easier for the respondents to complete the surveys.

EIA proposes to delete the question asking for the basis for coal quality information, in section III. Basis of Coal Quality, now included on the EIA–5A form. EIA believes that the information is not needed because it is not published, disseminated on the internet, nor used within EIA for analysis.

Form EIA–7A, ''Coal Production Report''

EIA proposes to add an additional data element to section J. Mining Location. EIA proposes to ask the respondents to identify the datum (geospatial referencing system) that was used in determining the latitude and longitude locations. EIA is proposing this change to meet OMB directives for standardizing geospatial data.

To help respondents, EIA proposes to add instructions on methods that can be used to determine the geographic location of coal mines and the datum of the location.

EIA also proposes to clarify section H. Disclosure of Information, Instructions for Completing Form EIA–7A. The instructions in section H will be modified to state that mine location (latitude and longitude) and datum will not be treated as confidential information. Currently, EIA releases other mine location information, such as State and county. EIA believes that the release of latitude and longitude locations and datums would not result in competitive harm to respondents.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for each of the surveys included in the Coal Program Package is shown below as an average hour(s) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

—Form EIA–1, ''Weekly Coal Monitoring Report—General Industries and Blast Furnaces'' (Standby); 1.0 hour per response (previous estimate was 1 hour)
—Form EIA–3, ''Quarterly Coal Consumption Report—Manufacturing Plants;'' 1 hour per response (previous estimate was .4 hours)
—EIA–3A, ''Annual Coal Quality Report—Manufacturing Plants;'' 0 hours per response (previous estimate was 1 hour) EIA is proposing elimination of Form EIA–3A.
—Form EIA–4, ''Weekly Coal Monitoring Report—Coke Plants'' (Standby); 1.0 hour per response (previous estimate was 1 hour)
—Form EIA–5, ''Quarterly Coal Consumption Report—Coke Plants;'' 1.5 hours per response (previous estimate was .9 hours)
—Form EIA–5A, ''Annual Coal Quality Report—Coke Plants;'' 0 hours per response (previous estimate was 1 hour) EIA is proposing elimination of Form EIA–5A.
—Form EIA–6, ''Coal Distribution Report;'' 5.0 hours per response (previous estimate was 5.0 hours)
—Form EIA–6 (Schedule Q), ''Quarterly Coal Report'' (Standby); 1 hour per response (previous estimate was 1 hour)
—Form EIA–7A, ''Coal Production Report;'' .75 hours per response (previous estimate was .8 hours)
—Form EIA–20, ''Weekly Telephone Survey of Coal Burning Utilities'' (Standby) 1 hour per response (previous estimate was 1 hour)

The Forms EIA–1, 4, 6 (Schedule Q), and 20 are Standby surveys. The above estimates reflect the anticipated burden per response in the event these surveys are implemented.

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 19, 2001.

Stanley R. Freedman,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–18638 Filed 7–25–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–359–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

July 19, 2001.

Take notice that on July 12, 2001, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of June 27, 2001:

First Revised Sheet No. 1132
First Revised Sheet No. 1133
First Revised Sheet No. 1134

DTI states that the filing is being made in compliance with the Commission's Letter Order, dated June 27, 2001, in Docket No. RP01–359–001. DTI states that First Revised Tariff Sheets Nos. 1132–1134 eliminate the stranded cost tracking mechanism contained in Section 18.2.B of the General Terms and Conditions of DTI's FERC Gas Tariff.

Section 18.2 of the General Terms & Conditions requires DTI to make quarterly stranded cost filings. On May 15, 2001, DTI requested a waiver of the requirement to return excess collections received through the stranded cost tracking mechanism. In support of its request, DTI stated that the contracts responsible for the stranded costs have expired on their own terms. The Commission granted the waiver but directed DTI to eliminate Section 18.2.B because it was no longer needed.

DTI states that copies of its letter of transmittal and enclosures have been served upon the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–18616 Filed 7–25–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–403–000]

Northern Natural Gas Company; Notice of Application

July 20, 2001.

Take notice that on July 16, 2001, Northern Natural Gas Company (Northern), 1111 S. 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP01–403–000, an application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction, operation and modification of certain compression and appurtenant facilities in Wisconsin, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.)

Specifically, Northern proposes to construct and operate a new 1,160 horsepower (hp) compressor unit with appurtenances at the existing Belleville compressor station in Green County, Wisconsin, and to modify the 3 existing units by rewheeling them. It is stated that the compressor station currently consists of 3 units totaling 3,480 hp and that following the installation of the proposed compressor and modifications, the compressor station will consist of 4 units totaling 4,640 hp.

Northern states that the proposal is required because of the proposed construction of a new pipeline by Guardian Pipeline, L.L.C. (Guardian), which would require increased pressure at an interconnection between Northern and Guardian and would increase operating pressures on Wisconsin Gas Company's downstream system. Northern states that the proposal will improve the operational efficiency, reliability and flexibility of the far east portion of Northern's East Leg, which extends from Boone County, Iowa, to Waukesha County, Wisconsin. It is estimated that the cost of the facilities and modifications will be $2.2 million. Northern requests rolled-in rate treatment for the cost of the proposal because it provides system benefits, consistent with the Commission's Certificate Policy Statement.

Any questions regarding this application should be directed to Keith L. Petersen, Manager, Certificates and Reporting for Northern, at (402) 398–7421, Northern Natural Gas Company, 1111 S. 103rd Street, Omaha, Nebraska 68124.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 10, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

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 Commission's website under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–18615 Filed 7–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2611–000, et al.]

Northeast Utilities Service Company, et al., Electric Rate and Corporate Regulation Filings

July 20, 2001.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company Select Energy, Inc.

[Docket No. ER01–2611–000]

Take notice that on July 17, 2001, Northeast Utilities Service Company (NUSCO) tendered for filing under Section 205 of the Federal Power Act, on behalf of Holyoke Water Power Company (HWP), Holyoke Power and Electric Company (HP&E), and Select Energy, Inc. (Select), a notice of termination of two power supply agreements and to amend another power supply agreement to reflect HWP's sale of certain hydroelectric facilities to the City of Holyoke Gas & Electric Department.

The Applicants state that copies of this filing have been sent to HWP, HP&E, and Select.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER01–2613–000]

Take notice that on July 16, 2001, PECO Energy Company (PECO) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Construction Agreement between PECO and Old Dominion Electric Cooperative (Old Dominion) designated as PECO's Rate Schedule FERC No. 141, to be effective on July 17, 2001.

Copies of this filing were served on Old Dominion and PJM Interconnection, L.L.C.

Comment date: August 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER01–2614–000]

Take notice that on July 17, 2001, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Wildflower Energy, LP.

The ISO is requesting that the Participating Generator Agreement to be made effective July 2, 2001.

The ISO states that this filing has been served on Wildflower Energy, LP and the California Public Utilities Commission.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER01–2615–000]

Take notice that on July 17, 2001, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Energy Transfer—Hanover Ventures, LP.

The ISO is requesting the Meter Service Agreement for ISO Metered Entities to be made effective July 2, 2001.

The ISO states that this filing has been served on Energy Transfer—Hanover Ventures, LP and the California Public Utilities Commission.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER01–2616–000]

Take notice that on July 17, 2001, Indiana Michigan Power Company tendered for filing an executed Interconnection and Operation Agreement between Indiana Michigan Power Company and Acadia Bay Energy Company, LLC. 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 10, 2001.

Copies of Indiana Michigan Power Company's filing have been served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Panda Power Corporation

[Docket No. ER98–447–009]

Take notice that on July 16, 2001, Panda Power Corporation (PPC) tendered for filing a draft updated market power analysis and a change of status report. On July 17, 2001, PPC tendered for filing a revised updated market power analysis and change in status report pursuant to the Commission's order issued in this Docket on December 22, 1997.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER01–1951–001]

Take notice that on July 17, 2001, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a supplement to its May 3, 2001, filing of Entergy Services' 2001 annual rate redetermination update (2001 Rate Update) in Docket No. ER01–1951–000. The supplement adds two pages to the 2001 Rate Update that address transmission service credits, such pages being inadvertently omitted from the 2001 Rate Update filing.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Exelon Generation Company, LLC

[Docket No. ER01–2601–000]

Take notice that on July 17, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Wisconsin Public Power, Inc. under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Pinnacle West Capital Corporation

[Docket No. ER01–2602–000]

Take notice that on July 17, 2001, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 4, under PWCC's Rate Schedule FERC No. 1 for service to Citizens Communications Company (Citizens). PWCC requests waiver of Commission Notice Requirements for an effective date of June 1, 2001.

A copy of this filing has been served on the Arizona Corporation Commission and Citizens.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER01–2603–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 17, 2001, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Wildflower Energy LP for acceptance by the Commission. The ISO states that this filing has been served on Wildflower Energy LP and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 2, 2001.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER01–2604–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 17, 2001, tendered for filing a Participating Generator Agreement between the ISO and Energy Transfer—Hanover Ventures, LP for acceptance by the Commission. The ISO states that this filing has been served on Energy Transfer—Hanover Ventures, LP and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 2, 2001.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Exelon Generation Company, LLC

[Docket No.ER01–2605–000]

Take notice that on July 17, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Illinois Municipal Electric Agency under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Company

[Docket No. ER01–2606–000]

Notice is hereby given that effective July 17, 2001, FERC Rate Schedule No. 66 (Agreement Providing for the Sale of Supplemental Capacity and Associated Energy by West Texas Utilities Company to the City of Coleman, Texas), having an initial effective date of August 11, 1992 with supplements filed on September 31, 1992, March 31, 1993, May 3, 1994, April 1, 1998, March 3, 1999 and May 31, 2000, and filed with the Federal Energy Regulatory Commission by West Texas Utilities Company is to be canceled.

Notice of the proposed cancellation has been served on the following:

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Tenaska Power Services Co.

[Docket No. ER01–2607–000]

Take notice that on July 17, 2001, Tenaska Power Services Co. (Tenaska Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application and revised tariff sheets seeking authorization to amend its power marketer tariff enabling Tenaska Power to reassign transmission capacity.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER01–2608–000]

Notice is hereby given that effective July 17, 2001, APS F.E.R.C. Rate Schedule No. 225, effective date March 1, 1995 and filed with the Federal Energy Regulatory Commission by Arizona Public Service Company is to be canceled.Notice of the proposed cancellation has been served upon Citizens Utilities Company and The Arizona Corporation Commission.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER01–2609–000]

Take notice that on July 17, 2001, Southern California Edison Company (SCE) tendered for filing under SCE's Transmission Owner Tariff an unexecuted Interconnection Facilities Agreement (Agreement) between SCE and Wildflower Energy LP (Wildflower). Copies of this filing were served upon the Public Utilities Commission of the State of California and Wildflower.

SCE respectfully requests the Interconnection Agreement to become effective July 18, 2001.

Comment date: August 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Company

[Docket No. ER01–2610–000]

Take notice that Central Maine Power Company (CMP), on July 17, 2001, tendered for filing pursuant to Section 205 of the Federal Power Act (FPA) of the Federal Energy Regulatory Commission (Commission or FERC), an ''Amendment to Nuclear Entitlement Agreement'' (the Amendment) between CMP and Engage Energy America LLC (Engage). In compliance with Order No. 614, FERC Stats. & Regs. 31,096 (2000), CMP also tendered for filing a First Revised Nuclear Entitlement Agreement (the First Revised Agreement), revised pursuant to the Amendment.

CMP respectfully requests that the Commission accept the Amendment and the First Revised Agreement effective as of June 26, 2001, without modification or condition, and grant waiver of any and all requirements.

Comment date: August 7, 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. 01–18613 Filed 7–25–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission,

[FERC Docket Nos. CP01–22–000 and CP01–23–000; CA Clearinghouse No. 2001011020; BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Availability/Completion of the Draft Environmental Impact Statement/Report and Draft Land Use Plan Amendment for the Proposed North Baja Pipeline Project

July 20, 2001.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) have prepared this draft environmental impact statement/report (EIS/EIR) and draft land use plan amendment (plan amendment) to address natural gas pipeline facilities proposed by North Baja Pipeline, LLC (NBP).

The draft EIS/EIR and draft plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land Management and Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. The FERC, the CSLC, and the BLM staffs conclude that approval of the proposed project, with appropriate mitigating

measures as recommended, would have limited adverse environmental impact.

The BLM is participating as a cooperating agency in the preparation of this document because the project would cross Federal land under the jurisdiction of the Palm Springs, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of this document because lands administered by the BOR would be crossed by the project. This draft EIS/EIR and draft plan amendment will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on lands managed by the BLM and the BOR. This draft EIS/EIR and draft plan amendment will also be used by the BLM to consider amending the California Desert Conservation Area (CDCA) Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan (Yuma District Plan), which would be necessary for pipeline construction across the Milpitas Wash Special Management Area. The BLM proposes to adopt this draft EIS/EIR and draft plan amendment per Title 40 Code of Federal Regulations (CFR) Part 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR Part 1610. The BLM Arizona and California State Directors have approved the draft plan amendments for their respective planning areas. The BLM will present its Record of Decision for the North Baja Pipeline Project after the issuance of the final EIS/EIR and proposed plan amendment.

The draft EIS/EIR and draft plan amendment addresses the potential environmental effects of the construction and operation of the following facilities in Arizona and California:

- About 79.9 miles of 36-inch-diameter (11.8 miles) and 30-inch-diameter (68.1 miles) natural gas pipeline (North Baja pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California, to an interconnection at the international border between the United States and Mexico;
- A new compressor station (Ehrenberg Compressor Station) consisting of three gas-fired centrifugal compressor units for a total horsepower ranging from 18,810 to 21,600 (with one additional spare unit) at the El Paso interconnect in La Paz County, Arizona;
- Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station);
- A pig launcher facility at the Ehrenberg Compressor Station site; a pig receiver facility at the Ogilby Meter Station site; and a separate pig launcher/receiver facility (Rannells Trap) in Riverside County, California; and
- Seven mainline valves, one each at the Ehrenberg Compressor Station site, Rannells Trap, and Ogilby Meter Station site, and another four spaced as required along the proposed pipeline route.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS/EIR and draft plan amendment may do so. Please carefully follow these instructions to ensure that your comments are received in time and are properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First St., N.E., Room 1A; Washington, DC 20426

Note: The FERC will provide copies to the BLM for review. The BLM will prepare any appropriate responses relative to the plan amendments.

- Reference Docket No. CP01–22–000;
- Label one copy of your comments for the attention of the Gas Group 1;
- Send an additional copy of your letter to the following individual:

Goodyear K. Walker,
California State Lands Commission, 100 Howe Ave., Suite 100 South Sacramento, CA 95825

- Mail your comments so that they will be received in Washington, DC on or before October 25, 2001.

Comments, protests and interventions may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC's website under the ''e-Filing'' link.

In addition to written comments, the FERC, the CSLC, and the BLM will hold public meetings in the project area to receive comments on the draft EIS/EIR and draft plan amendment. All meetings will begin at 7 p.m., and are scheduled as follows:

Dates and Locations

August 22, 2001
Blythe City Council Chamber, 235 North Broadway, Blythe, California 92225, (760) 922–6161
August 23, 2001
Vacation Inn, 2000 Cottonwood Circle, El Centro, California 92243, (760) 352–9523

Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS/EIR and draft plan amendment. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS/EIR and draft plan amendment, a final EIS/EIR and proposed plan amendment will be published and distributed. The final EIS/EIR and proposed plan amendment will contain the FERC, the CSLC, and the BLM staffs' responses to timely comments received on the draft EIS/EIR and draft plan amendment.

Comments will be considered by the FERC, the CSLC, and the BLM but will not serve to make the commenter 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 Procedure (Title 18 Code of Federal Regulations, Part 385.214). Anyone may intervene in this proceeding based on this draft EIS/EIR. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

Federal, state, and local agencies; elected officials; Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments, comments on the draft EIS/EIR and draft plan amendment, or who previously asked to remain on the mailing list will receive a copy of the final EIS/EIR and proposed plan amendment. If you are not described by one of these categories but wish to receive a copy of the final EIS/EIR and proposed plan amendment, you must write to the Secretary of the FERC indicating this request. Individuals who do not indicate their desire to receive the final EIS/EIR and proposed plan amendment will only receive a Notice of Availability/Notice of Completion of the final EIS/EIR and proposed plan amendment.

The draft EIS/EIR and draft plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371 and California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825–8202, (916) 574–1889

A limited number of copies of the draft EIS/EIR and draft plan amendment are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Goodyear K. Walker, CSLC, at the address above. The draft EIS/EIR and draft plan amendment is also available for viewing on the FERC, CSLC, and BLM websites at the Internet addresses below.

Additional information about the proposed project is available from Goodyear K. Walker at the CSLC at (916) 574–1893, or on the CSLC website at *http://www.slc.ca.gov,* or from the FERC's Office of External Affairs at (202) 208–1088, or on the FERC website at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance). Access to the texts of formal documents issued by the Commission with regard to these dockets, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the proposed CDCA and Yuma District Plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process is available from Lynda Kastoll, BLM Project Manager, at (760) 337–4421, or on the BLM website at *http://www.ca.blm.gov/elcentro/northbaja.*

David Boergers,

Secretary, Federal Energy Regulatory Commission.

[FR Doc. 01–18614 Filed 7–25–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34240; FRL–6789–6]

Lactofen; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health risk assessment and related documents for lactofen (Cobra®). This notice also starts a 60–day public comment period for the risk assessment. Comments are to be limited to issues directly associated with lactofen and raised by the risk assessment or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that the risk assessment for lactofen is preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34240 for lactofen, must be received on or before September 24, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify the docket control number for lactofen, OPP–34240, in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–2201; e-mail address: scheltema.christina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the FFDCA, or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. 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/. 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/. In addition, copies of the risk assessment and certain related documents for lactofen may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm .

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34240. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number for lactofen, OPP–34240, in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34240. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility and tolerance reassessment decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's human health risk assessment and other related documents for lactofen are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for lactofen.

The Agency cautions that the lactofen risk assessment is preliminary and that further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessment for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessment, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by September 24, 2001 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for lactofen.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 14, 2001.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–18654 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34241; FRL–6789–4]

Sodium Acifluorfen; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health and ecological fate and effects risk assessments and related documents for sodium acifluorfen (Blazer®). This notice also starts a 60–day public comment period for the risk assessments. Comments are to be limited to issues directly associated with sodium acifluorfen and raised by the risk assessments or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments for sodium acifluorfen are preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is

appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34241 for sodium acifluorfen, must be received on or before September 24, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number for sodium acifluorfen, OPP–34241, in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–2201; e-mail address:scheltema.christina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. 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/. 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/. In addition, copies of the risk assessments and certain related documents for sodium acifluorfen may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm .

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34241. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number for sodium acifluorfen, OPP–34241, in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34241. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed

as part of the Agency's public participation process for making reregistration eligibility and tolerance reassessment decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's human health and ecological fate and effects risk assessments and other related documents for sodium acifluorfen are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for sodium acifluorfen.

The Agency cautions that the sodium acifluorfen risk assessments are preliminary and that further refinements may be appropriate. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemicals. Comments should be limited to issues raised within the risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by September 24, 2001 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for sodium acifluorfen.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 14, 2001

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–18655 Filed 7–25–01; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 01–100; FCC 01–208]

Application by Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Authorization To Provide In-Region, InterLATA Services in Connecticut

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission grants the section 271 application of Verizon New York Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of Connecticut. The Commission grants Verizon's application based on our conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Alexis Johns, Attorney-Advisors, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in CC Docket No. 01–100 released July 20, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov/ccb/ppb/2001ord.html.*

Synopsis of the Order

1. On April 23, 2001, Verizon filed an application, pursuant to section 271 of the Communications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Connecticut.

2. *The State Commission's Evaluation.* The Connecticut Department of Public Utility Control (Connecticut Department) advised the Commission, following months of extensive review, that Verizon met the checklist requirements of section 271(c) and has taken the statutorily required steps to open its local markets to competition. Consequently, the Connecticut Department recommended that the Commission approve Verizon's in-region, interLATA entry in its May 14, 2001 evaluation of the application.

3. *The Department of Justice's Evaluation.* The Department of Justice (DOJ) filed its evaluation of Verizon's Connecticut application on May 25, 2001. It does not oppose Verizon's 271 application for Connecticut in light of the unique circumstances involved. The DOJ cites the limited extent of Connecticut's service area and the fact that it serves competitive LECs in Connecticut through New York-based systems and operations, which the Commission reviewed in the successful New York 271 application.

Primary Issues in Dispute

4. *Checklist Item 4—Unbundled Local Loops.* Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271 and our rules. More specifically, Verizon provides nondiscriminatory access to stand alone xDSL-capable loops and digital loops and has demonstrated that it has a line-sharing provisioning process that affords competitors nondiscriminatory access to these facilities. Since Verizon's order volumes for unbundled loops in Connecticut are extremely low, it relies mainly on New York performance data to support its application in Connecticut, therefore the Commission's analysis is based primarily on that data.

5. *DSL Stand-Alone Loops.* Verizon demonstrates that it is providing stand-alone DSL-capable loops in accordance with the requirements of checklist item 4. The Commission's review of the New York performance data for Verizon's stand-alone loops demonstrates that it installs such loops Connecticut in the same time and manner that it installs such loops for its own retail operations. New York maintenance and repair performance data for DSL loops also show comparable performance for competitors and Verizon retail customers. Also, as of April 2001, Verizon had provisioned only 22 digital loops to competitive LECs in Connecticut. The Commission therefore looks at New York data, which indicates

that Verizon meets the requirements of checklist item 4.

6. *Other Unbundled Loops.* As with stand-alone xDSL loops, the data demonstrate that Verizon's performance for digital loop ordering is at parity. Verizon's performance for other maintenance and repair functions for digital loops is comparable for Verizon retail customers and competitive LECs. Also, the Commission finds that Verizon demonstrates nondiscriminatory access to the high-frequency portion of the loop. It offers line sharing in Connecticut under its interconnection agreements and the terms of its tariff, in accordance with the requirements of the *Line Sharing Order* (64 FR 29598) and *Line Sharing Reconsideration Order* (66 FR 9035). Moreover, given the lack of orders for high capacity loops in Connecticut and the small percentage of such orders in New York, the Commission finds that Verizon's performance for high capacity loops complies with checklist item 4.

7. *Checklist Item 14—Resale.* The Commission concludes that Verizon demonstrates that it satisfies the requirements of this checklist item in Connecticut. The Commission waives its section 271 procedural ''freeze frame'' requirements to the extent necessary to allow us to consider Verizon's expanded resale offering of DSL services through its advanced services affiliate, Verizon Advanced Data, Inc. (VADI). In an *ex parte* letter dated July 6, 2001, Verizon stated that VADI would expand its DSL resale offering in Connecticut, allowing a competitive LEC to resell DSL service over a line on which the competitive carrier resells Verizon's voice service. Verizon's July 6 *ex parte* letter also contains illustrative tariff pages for its expanded resale offering of DSL. VADI implemented these changes through revisions to its F.C.C. Tariff No. 1, which became effective on July 20, 2001. Verizon and VADI, which are subject to the same resale obligations, currently provide local exchange and DSL services to retail customers over the same line. Therefore, the Commission finds that, because Verzon and VADI offer these services on a retail basis, these services are eligible for a wholesale discount under section 521(c)(4). Accordingly the Commission concludes that Verizon must make available to resellers, at a wholesale discount, the same package of voice and DSL services that it provides to its own retail end-user customers.

8. *Non-pricing Issues.* The Commission concludes that Verizon demonstrates that it makes telecommunications services available for resale in Connecticut in accordance with section 251(c)(4) and 252(d)(3), thus satisfying the requirements of checklist item 14. Verizon states that it commits in its interconnection agreements and tariffs to making its retail services available to competing carriers at wholesale rates.

9. *Pricing.* The Commission relies on the resale discount and rates in the currently effective tariff in concluding that Verizon is in compliance with the pricing requirements of checklist item 14. Verizon stated in this proceeding that it will modify wholesale and resale rates in Connecticut ''contemporaneously'' with the modification of these rates in New York. This is part of Verizon's overall commitment to continue to mirror New York wholesale rates, as required by the Connecticut Department.The Commission concludes that Verizon

Other Checklist Items

10. *Checklist Item 1—Interconnection and Collocation.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in Verizon's network. The Commission finds that Verizon makes interconnection available at any technically feasible point, including the option interconnect at only one technically feasible point within a LATA.

11. Verizon demonstrates that its collocation offerings in Connecticut satisfy the requirements of sections 251 and 271 of the Act. Verizon provides physical and virtual collocation through state-approved tariffs. Verizon's Connecticut physical and virtual collocation tariffs are virtually identical to the New York physical and virtual collocation tariffs, which we found to satisfy checklist item 1 in our Bell Atlantic New York Order. Verizon demonstrates that it offers interconnection in Connecticut to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

12. *Checklist Item 2—Unbundled Network Elements.* The Commission finds that charges for UNEs made available in Connecticut to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. Verizon uses its New York systems and processes to serve its Connecticut subscribers and the Connecticut Department has ordered Verizon to continue to make available to competitive LECs in Connecticut all UNE combinations Verizon offers in New York. Based on the present record, the Commission finds that Verizon demonstrates that it provides nondiscriminatory access to its OSS.

13. *Checklist Item 5—Unbundled Local Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide ''local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.'' The Commission concludes, based upon the evidence in the record, that Verizon demonstrates that it provides both shared and dedicated transport in compliance with the requirements of checklist item 5.

14. *Checklist Item 13—Reciprocal Compensation.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) and is making all required payments in a timely fashion. Verizon thus satisfies the requirements of checklist item 13.

15. *Remaining Checklist Items (3, 6–12.).* An applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), checklist item 6 (unbundled local switching), item 7 (911/E911 access and directory assistance/operator services), item 8 (white page directory listings), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), and item 12 (local dialing parity). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Verizon demonstrates that it is in compliance with checklist items 3, 6, 7, 8, 9, 10, 11 and 12 in Connecticut. The Connecticut Department also concludes that Verizon complies with the requirements of each of these checklist items.

16. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Connecticut. The record demonstrates

that competing LECs serve a sufficient number of business and residential customers using predominantly their own facilities in its very limited service area in Connecticut. The Connecticut Department likewise concluded that Verizon satisfies the requirements of section 271(c)(1)(A).

17. *Section 272 Compliance*. Verizon has demonstrated that it complies with the requirements of section 272. Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Connecticut as it does in New York and Massachusetts, states in which Verizon has already received section 271 authority.

18. *Public Interest Analysis*. The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

19. Among other factors, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this Application. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission also finds that the record confirms our view that a BOC's entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

20. The Commission also finds that the performance monitoring and enforcement mechanisms developed in Connecticut, in combination with other factors, provide meaningful assurance that Verizon will continue to satisfy the requirements of section 271 after entering the long distance market.

21. *Section 271(d)(6) Enforcement Authority*. Working with the Connecticut Department, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–18696 Filed 7–25–01; 8:45 am]

BILLING CODE 6712–01–P

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.: 011708–001.

Title: Zim/COSCON Slot Charter Agreement.

Parties: COSCO Container Lines Co., Ltd., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would reduce COSCON's Eastbound and Westbound slot commitment on Zim vessels from 150 TEUs per week to 100 TEUs and Zim's slot commitment on COSCON vessels would be reduced from 100 TEUs per week to 30 TEUs westbound and from 75 TEUs per week to 30 TEUs Eastbound in the trade between the U.S. Atlantic and port on the Mediterranean. The modification would also allow the parties to adjust any slot charter commitments within fifty percent without further amendment.

Agreement No.: 011745–001.

Title: Evergreen/Lloyd Triestino Alliance Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Lloyd Triestino Di Navegazione S.P.A.

Synopsis: The proposed amendment adds an additional string to the alliance agreement with five vessels added by Lloyd Triestino and authorizes the parties to charter space from each other.

Agreement No.: 011771.

Title: Seafreight/Crowley Space Charter Agreement.

Parties: Seafreight Line, Ltd, Crowley Liner Service, Inc.

Synopsis: The proposed agreement permits Crowley to space charter on Seafreight vessels in the trade between Jacksonville/Port Everglades (Florida) and Kingston, Jamaica. The parties have requested expedited review.

Agreement No.: 201030–001.

Title: New Orleans/SSA Gulf/P&O Ports Terminal Lease Agreement.

Parties: The Board of Commissioners of the Port of New Orleans.

P&O Ports Gulfport, Inc.

SSA Gulf Terminals, Inc.

Synopsis: The proposed amendment reduces the area covered by the lease and changes the terms of payment. The amendment also takes into account name changes of two of the parties. The basic term of the agreement continues to run until July 23, 2002.

Dated: July 20, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–18597 Filed 7–25–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 14685N

Name: Air-Sea Transport (Seattle) Ltd.

Address:: 6947 Coal Creek Parkway SE, Suite 206, New Castle, WA 98059.

Date Revoked: May 25, 2001.

Reason: Failed to maintain a valid bond.

License Number: 13140N

Name: American Caribbean Express Shipping Co., Inc. dba A.C.E. Shipping.

Address: Brooklyn Navy Yard, Building 3, 11th FL, Brooklyn, NY 11205.

Date Revoked: June 14, 2001.

Reason: Failed to maintain valid bond.

License Number: 4595F

Name: Claudia C. Mayorga dba Majestic Freight Forwarders Service.

Address: 16310 Los Alimos Street, Granada Hills, CA 91344.

Date Revoked: June 14, 2001.

Reason: Failed to maintain a valid bond.

License Number: 13944N

Name: Directional Transportation Services, Inc. dba DTS, Inc.
Address: 18209 Chisholm Trail, Suite 112, Houston, TX 77060.
Date Revoked: May 31, 2001.
Reason: Failed to maintain a valid bond.

License Number: 11621N and 11621F
Name: Federated Transport Systems, Inc.
Address: 13900 S. Broadway, Los Angeles, CA 90061.
Date Revoked: April 25, 2001 and May 6, 2001.
Reason: Failed to maintain valid bonds.

License Number: 7078N
Name: Gateway Express Co., Inc.
Address: 828 W. Hillcrest Blvd., Los Angeles, CA 90301.
Date Revoked: May 12, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3826F
Name: Graebel/Houston Movers, Inc.
Address: 10901 Tanner Road, Houston, TX 77041.
Date Revoked: June 23, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3453N
Name: International Cargo Services, Inc. dba Beluga Carriers.
Address: 1079 Carriage Hill Parkway, Annapolis, MD 21401.
Date Revoked: May 30, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16324N
Name: International Oceancargo Inc.
Address: 30 Montgomery Street, Suite 210, Jersey City, NJ 07302.
Date Revoked: June 22, 2001.
Reason: Failed to maintain a valid bond.

License Number: 13647N
Name: Lidor Shipping Moving & Storage, Inc.
Address: 380 Bergen Avenue, Kearny, NJ 07032.
Date Revoked: June 14, 2001.
Reason: Failed to maintain a valid bond.

License Number: 13709N
Name: Pac West Trading and Transport, Inc.
Address: 2531 W. 237th, Suite 122, Torrance, CA 90505.
Date Revoked: June 22, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4594F
Name: Paramount Transportation Systems, Inc.
Address: 100 W. Rancho Santa Fe Road, Suite 125, San Marco, CA 92069.
Date Revoked: June 16, 2001.
Reason: Failed to maintain a valid bond.

License Number: 1110F
Name: Phil Thomas & Son International Co.
Address: 1960 Green Trails Drive, Lisle, IL 60532.
Date Revoked: May 29, 2001.
Reason: Failed to maintain a valid bond.

License Number: 1830F
Name: Westwind Overseas Limited.
Address: 633 Broadway, Hastings-on-Hudson, NY 10700.
Date Revoked: June 3, 2001.
Reason: Failed to maintain a valid bond.

Dated: July 20, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–18596 Filed 7–25–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

New York Logistic Services, Inc., 207 Timber Oaks Road, Edison, NJ 08820. Officers: Syed Hamid Hussaini, CEO, Mohamed Abouelmaati, President (Qualifying Individuals)
Champion Int'l Freight, Inc., 3200 Westleigh Avenue, Las Vegas, NV 89102. Officer: Bibi Chin, President (Qualifying Individual)
Coldwave Systems, LLC 85 Eastern Avenue, Gloucester, MA 01930. Officers: B. Eric Graham, Manager (Qualifying Individual)
David Bell, Member, Masters International Logistics, Inc., 88 Prospect Street, 1st Floor, Paramus, NJ 07652. Officers: Won H. Kim, President (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Miami Apparel Services, Inc., 9324 NW 102 Street, Medley, FL 33178. Officer: Milthon N. Tejada, President (Qualifying Individual)
Faour International Co., 1971 W. Fifth Avenue, Suite 2, Columbus, OH 43212. Officers: Hussam M. Faour, President (Qualifying Individual)
Nidal Saleh, Secretary, Ocean Freight Forwarder—Ocean Transportation Intermediary. Applicants: BKA Logistics, LLC 1101 Connecticut Ave., NW., Suite 900, Washington, DC 20016. Officers: Peter M. Kelly, Director (Qualifying Individual)
James B. Mead, President, Natco International Transports, 12415 SW 136th Avenue, Bay 4, Miami, FL 33186. Officers: Andres Hernadez, General Manager (Qualifying Individual),
Jason Duarte, Vice President

Dated: July 20, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–18595 Filed 7–25–01; 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 20, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Western Bank Shares, Inc., Huron, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Marquette Bank Nebraska, N.A., O'Neill, Nebraska.

Board of Governors of the Federal Reserve System, July 20, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–18591 Filed 7–25–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01150]

Expansion of Activities Supporting Coordination and Networking Among and Information Sharing and Networking Between Non-Governmental AIDS Service Organizations in the Republic of Zimbabwe; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement to improve and expand coordination, networking, and information sharing activities between and among non-governmental AIDS service organizations (ASOs) in Zimbabwe.

The U.S. Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas through a recently funded Global AIDS Initiative. Through this program, CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Zimbabwe is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with other U.S. Government agencies (e.g., USAID), national governments and other partners to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of technical assistance to Zimbabwe focuses on several areas including strengthening surveillance and laboratory measures, scaling up promising prevention and care strategies, supporting behavior change communication projects, promoting communication and technology transfer, and other capacity building efforts.

Zimbabwe is experiencing one of the world's most severe AIDS crises that looms as a disaster of unprecedented proportions. Zimbabwe has one of the world's highest HIV prevalence rates among adults, and the proportion of children orphaned by AIDS is expected to reach 35 percent by 2010.

Zimbabwe has taken many positive steps to address the AIDS epidemic. It was one of the first governments in the world to negotiate a large World Bank loan for AIDS prevention in 1992.

The national response has generated many examples of creative programming and successful grassroots initiatives in the face of staggering adversity. In December 1999, the Government of Zimbabwe (GOZ) declared AIDS a national disaster, created a new ministerial-level, multi-sectoral National AIDS Council (NAC), announced a new National AIDS Policy and instituted an ''AIDS levy'' payroll tax to underwrite improved national AIDS prevention and care services.

However, despite these and others interventions, the prevalence of HIV infection appears to have increased substantially in Zimbabwe from 1997 to 2000, and the epidemic cannot yet be characterized as having stabilized.

High prevalence rates among women 15–19 yrs of age suggests that recent infections continue to be high, including among youth. In addition, Zimbabwe is facing economic and political crises which compete for attention with and directly impact current responses to the AIDS epidemic.

The response to HIV/AIDS in Zimbabwe needs to be significantly strengthened in several areas. The Government of Zimbabwe, in its effort to lead the public sector response, needs to strengthen three public health activities and programs in areas such as surveillance, laboratory systems and services and access to voluntary counseling and testing (VCT). The response on the part of civil society can be characterized as aggressive but poorly coordinated. Activities of Zimbabwean non-governmental AIDS service organizations (ASOs) span the spectrum from care, prevention, training, education and advocacy. Literally hundreds of organizations have programs of work at village, district, regional and national levels. However, to date there has been little coordination of effort among these organizations, few efforts to evaluate coverage or reduced duplication of services, inadequate efforts to evaluate and help address resource mobilization requirements and relatively little done to address information exchange/communication needs. Improvements in these facets of the response to HIV/AIDS on the part of civil society are major unmet needs in Zimbabwe.

The purpose of this cooperative agreement is therefore to improve and expand coordination, networking, and information sharing activities between and among non-governmental ASOs in Zimbabwe.

These collaborative activities could profoundly impact the scope, coordination and intensity of the implementation the National AIDS Policy, which calls for multi-sectoral action on many fronts. Cooperative efforts could lead to significant improvements in coordination of HIV/AIDS prevention and care activities in all provinces, increased capacity building of ASOs, resource mobilization activities targeting HIV/AIDS ASOs across Zimbabwe and strengthened ties between organizations within civil society and government HIV/AIDS and related programs.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, non-governmental organizations with two years experience in HIV/AIDS, including facilitating information exchange and coordinating service activities between and among other non-governmental ASOs and relevant government agencies or other partner organizations in the majority of provinces of Zimbabwe.

C. Availability of Funds

Approximately $300,000 is available in FY 2001 to fund this agreement. It is expected that the awards will begin on or about September 30, 2001 and will be made for a 12-month budget period

within a project period of three (3) years. Annual funding estimates may change. Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

1. Direct Assistance

Direct provision of equipment and supplies (e.g., vehicles, computer hardware/software, specific consumables may be requested as direct assistance in lieu of this financial assistance.

2. Use of Funds

Funds received from this announcement may not be used for the direct purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in PMTCT cases and with prior written CDC approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

No funds awarded under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drugs.

Applicants may contract with other organizations under these cooperative agreements; however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exception:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

A. Strengthen Operational Capacity

(1) Assess needs of non-governmental ASOs in the areas of operational systems and capacity including: Monitoring and evaluation; communications management; design, assembly and dissemination of public information; prevention; information management and effective use of information to direct, monitor, and evaluate ongoing performance; physical plant; resource mobilization, and coordination and collaboration.

(2) Develop structured methods to improve operational systems.

(3) Develop a plan to assist Zimbabwe ASOs in assessing their operational capacity and their ability to (a) effectively carry out their goals and objectives; (b) coordinate the services of ASOs with, for example, the Zimbabwe government/MOH, National AIDS Council, and other partners; and (c) increase the responsiveness to donors, clients and other constituents.

B. Expand Coordination Capacity

(1) Determine need for, and conduct evaluation activities with non-governmental ASOs, for example, ASO service delivery patterns, service needs/requirements, impact analyses, resource mobilization needs.

(2) Plan provincial and national meetings and congresses to foster and improve coordination of ASO activities, information sharing, and assessment of needs and gaps in ASO services.

(3) Develop a plan for information exchange, resource mobilization, capacity building, and coordination of ASO activities at the provincial level in Zimbabwe.

C. Strengthen Network Communication and Information Exchange

(1) Support improvements to communication systems supporting non-governmental ASOs, government, and other partners, including training and support services for development of strategies for effective use of information, and efficient use of information and telecommunication technologies to implement those strategies.

(2) Support expansion of web development assistance provided to non-governmental ASOs, government and other partners.

D. Provide Capacity Building Assistance to Zimbabwe ASOs

(1) Provide Capacity Building Assistance and service delivery support in priority interventions (to be defined in collaboration with CDC and other partners) to non-governmental ASOs, government and other partners directly or through small contracts.

2. CDC Activities

(1) Collaborate as needed with the recipient on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, analyses, capacity building assistance.

(2) Monitor project and budget performance.

E. Application Content

Please use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections of this document to develop your 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 (excluding the abstract, attachments and appendices) double-spaced pages, printed on one side, with one inch margins, and unreduced font. Pages should be numbered, and a complete index to the application and any appendices must be included.

Please include a two-page, double-spaced summary of your proposed activities.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–l (OMB Number 0920–0428). Forms are available at the following Internet address: www.cdc.gov/od/pqo/forminfo.htm or in the application kit.

On or before August 24, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Problem (20 Points)

Extent to which the applicant demonstrates a clear and concise

understanding of the nature of the HIV/AID epidemic in Zimbabwe, capacity building and coordination needs among non-governmental ASOs and other partners in Zimbabwe, and understanding of the broader network of supporting organizations and resources dedicated to facilitating the function of ASOs in Southern Africa. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical and Programmatic Approach (25 Points)

The extent to which the applicant's proposal demonstrates an understanding of how to assess the needs of an open system with diverse ASOs and other partners including an overall design strategy and including measurable time lines.

The extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives. This includes developing a plan to assist non-governmental ASOs in assessing their needs, gaps in services, and methods. The extent to which the applicant proposes a system for providing capacity building support to non-governmental ASOs in Zimbabwe.

3. Ability To Carry Out the Project (20 Points)

The extent to which the applicant demonstrates organizational capability to achieve the purpose of the project including experience networking with ASOs in Zimbabwe and familiarity with structure, function, resources and customs of Zimbabwe.

The extent to which the applicant has an existing, formal membership/network that includes the majority of provinces of Zimbabwe, as evidenced by membership and or dues paying lists.

4. Personnel (20 Points)

The extent to which professional personnel involved in this project are qualified, including documented evidence their knowledge of and experience in working with ASOs to promote effective HIV/AIDS care and prevention services by ASOs that deliver services directly.

The extent to which the composition of the applicant's key management and direct staff are indigenous to the population of Zimbabwe.

5. Plans for Administration and Management of Projects (15 Points)

The extent to which the composition of the applicant's board of directors reflects the indigenous population of Zimbabwe, other ASOs, and other relevant partners across Zimbabwe provinces.

The extent to which the applicant's charter, mission, and mandate reflects its role as a key national ASO networking organization. Adequacy of plans for administering the projects including understanding of their organizational capabilities and administrative infrastructure, for example, administrative and fiscal management systems.

6. Budget (Not Scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

The recipient is required to provide CDC with original plus two copies of:

1. Written quarterly progress reports;
2. Financial status report, no more than 45 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the program contact and the Grants Management Specialist, both identified in the ''Where to Obtain Additional Information'' section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application kit. Some of the more complex requirements have some additional information provided below:

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, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: dpr7@cdc.gov.

For program technical assistance, contact: Michael St. Louis, MD, Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe, Telephone: 263 4 796040, 796048, Fax: 263 4 796032, E-mail: stlouism@zimcdc.co.zw.

Dated: July 20, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18632 Filed 7–25–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 8, 2001, from 9:30 a.m.

to 4:30 p.m., and August 9, 2001, from 9:30 a.m. to 4 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on the reclassification of metal on metal total hip arthroplasty devices. Also, the committee will discuss, make recommendations, and vote on premarket approval application (PMA) for a metacarpophalangeal finger joint prosthesis.

Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the August 8 meeting will be posted on August 7, 2001; material for the August 9 meeting will be posted on August 8, 2001.

Procedure: On August 8, 2001, from 9:30 a.m. to 3:30 p.m., and on August 9, 2001, from 9:30 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 1, 2001. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. on August 8, 2001, and between approximately 9:30 a.m. and 10 a.m. on August 9, 2001. On both days, near the end of the committee deliberations for the reclassification petition and the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 1, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On August 8, 2001, from 3:30 p.m. to 4:30 p.m., the meeting will be closed to the public to permit FDA to present to the committee trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding present and future FDA issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 20, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–18750 Filed 7–24–01; 3:30 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0274]

Laser Products—Conformance with IEC 60825–1, Am. 2 and IEC 60601–2–22; Final Guidance for Industry and FDA (Laser Notice 50); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Laser Products—Conformance with IEC 60825–1, Am. 2 and IEC 60601–2–22 (Laser Notice 50).'' This guidance document describes the conditions under which laser product manufacturers may introduce into U.S. commerce laser products that comply with the IEC standards 60825–1, as amended, and 60601–2–22. This guidance document also describes additional requirements of the FDA standard and alternate certification statements to be used with such products. This guidance document provides interim relief to manufacturers from conformance with two differing standards and precludes the need for submission of many requests for variances from the FDA standard while FDA harmonizes with many of the IEC requirements for laser products.

DATES: Submit written or electronic comments concerning this guidance by October 24, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Laser Products—Conformance with IEC 60825–1, Am. 2 and IEC 60601–2–22 (Laser Notice 50)'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written or electronic comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of the document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Jerome Dennis, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4654.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document describes the conditions under which laser product manufacturers may introduce into United States commerce laser products that comply with the IEC standards 60825–1, as amended, and 60601–2–22. This guidance document also describes additional requirements of the CDRH standard and alternate certification statements to be used with such products. CDRH intends to amend its standards for laser products at 21 CFR 1040.10 and 1040.11 to harmonize many of its requirements with those of the IEC 60825–1 and 60601–2–22 standards. Although CDRH began its amendment process in anticipation of the amendment of IEC 60825–1, CDRH is not yet ready to publish an amendment. CDRH has acknowledged the advantages of one set of criteria and requirements worldwide. Amendment 2 to IEC 60825–1 was published in January 2001. As a result, manufacturers distributing products in both the United states and countries that require conformance with or that recognize IEC 60825–1 will have to evaluate the conformance of their products with this standard and often change the hazard classification of their products. These manufacturers are requesting relief from CDRH requirements so that they will have only to comply with one laser product radiation safety standard. This guidance supersedes: ''Labeling of Laser Products, August 15, 1995 (Laser Notice 45).'' See the **ELECTRONIC ACCESS** section for information on this guidance.

FDA is putting this guidance document into effect immediately because the guidance document is presenting a new policy, consistent with public health, that is less burdensome

than current policy. This guidance document is appropriate because of the amendment of IEC 60825–1 and the intent of CDRH to harmonize its requirements with many of those of the IEC standards.

II. Significance of Guidance

This guidance document represents the agency's current thinking on appropriate interim relief for manufacturers from differences between the amendments of the IEC and CDRH radiation safety standards for laser products. It does not create or confer any rights for or on any person and does not operate to bind the FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted good guidance practices (GGPs) regulation, and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document is issued as a level 1 guidance consistent with the GGPs.

III. Electronic Access

In order to receive ''Laser Products—Conformance with IEC 60825–1, Am. 2 and IEC 60601–2–22; (Laser Notice 50)'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1346) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/dockets/default.htm. Laser Notice 45 may be accessed at www.fda.gov/cdrh/radhlth/index.html under the index heading for ''Lasers, Including Light Shows'' as a ''Notices to Industry.'' Scroll to number 92 in the list of notices.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this guidance by October 24, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–18598 Filed 7–25–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: CMS–R–200]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Health Plan Employer Data and Information Set (HEDIS) and Health Outcome Survey (HOS) and Supporting Regulations in 42 CFR 422.152; *Form No.:* CMS–R–200 (OMB# 0938–0701); *Use:* The Centers for Medicare & Medicaid Services (formerly HCFA) collects quality performance measures in order to hold the Medicare managed care industry accountable for the care being delivered, to enable quality improvement, and to provide quality information to Medicare beneficiaries in order to promote an informed choice. It is critical to CMS's mission that we collect and disseminate information that will help beneficiaries chose among health plans, contribute to improved quality of care through identification of improvement opportunities, and assist CMS in carrying out its oversight and purchasing responsibilities; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals or households; *Number of Respondents:* 313,825; *Total Annual Responses:* 313,825; *Total Annual Hours:* 571,488.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 13, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–18662 Filed 7–25–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10014]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a Previously Approved Collection; *Title of Information Collection:* Informatics, Telemedicine, and Education Demonstration Project; *Form No.:* HCFA–10014 (OMB# 0938–0806); *Use:* Section 4207 of the Balanced Budget Act of 1997 mandated HCFA to conduct a demonstration project to evaluate the effectiveness of advanced computer and telecommunications technology (''telemedicine'') to manage the care of people with diabetes; *Frequency:* Semi-annually; *Affected Public:* Business or other for-profit and Individuals or Households; *Number of Respondents:* 5,550; *Total Annual Responses:* 10,043; *Total Annual Hours:* 19,999.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 13, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–18661 Filed 7–25–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–19]

Redelegation of Authority To Remove Appraisers From FHA Roster

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of redelegation of authority to remove appraisers from the FHA roster pursuant to the HUD regulation at 24 CFR part 200.204.

SUMMARY: By this action, the Assistant Secretary for Housing-Federal Housing Commissioner re-delegates to certain HUD officials, in the FHA Single Family Homeownership Centers (HOCs) in Philadelphia, PA; Atlanta, GA; Denver, CO and Santa Ana, CA, the power and authority to issue notices of removal from the FHA roster to appraisers who have been found in violation of HUD regulations at 24 CFR 200.204(a)(1).

EFECTIVE DATE: July 19, 2001.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Insured Single Family Housing Program Development, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2700 (this is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service a 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD's regulation at 24 CFR 200.204 sets forth reasons for removing an appraiser from the FHA roster, procedures for removal and reinstatement of the appraiser, and types of remedies available to the Department against an appraiser found to have violated HUD statutes or regulations. On July 27, 2000, the Assistant Secretary for Housing re-delegated to designated officials in each HOC the power and authority to issue written notices of proposed removal, and to process any appeals of the notice of proposed removal, including conducting an informal conference if requested by the appraiser. (*See* 65 FR 49004, August 10, 2000.) The re-delegation indicated that, unless extended, it would automatically expire on July 27, 2001. The Assistant Secretary has determined that the re-delegation should be extended subject to the limitations in Section B below.

Therefore, the Assistant Secretary for Housing hereby retains and re-delegates authority, as follows:

Section A. Re-Delegation of Authority

1. *Notices of Proposed Roster Removal:* In accordance with 24 CFR 200.204(a)(2)(i), the Director of the Processing and Underwriting Division within each HOC, and the Branch Chief of the Technical Branch within that Division, are each, individually, re-delegated the authority to issue the written notice of proposed roster removal to the appraiser. This notice will include the reasons for the proposed removal and the duration of the removal.

2. *Appeals of Proposed Roster Removals:* In accordance with 24 CFR 200.204(a)(2)(iii), the Director of the HOC, and the Deputy Director of the HOC, are each, individually, re-delegated the authority to handle appeals of the notice of proposed removal, including conducting an informal conference if so requested by the appraiser. Also, in accordance with 24 CFR 200.204(a)(2)(iii), within 30 days of receiving a written response from an appraiser, or within 30 days of the completion of an informal conference, the Director or Deputy Director of the HOC will review the appraiser's appeal and will issue a final decision either affirming, modifying or canceling an appraiser's removal from the appraiser roster. The time period for responding to an appraiser's appeal may be extended upon notice to the appraiser. The HOC Director or Deputy Director may not have been involved in HUD's initial removal decision.

Section B. Limitations on Authority

1. *Waiver of HUD Regulations:* The authority re-delegated does not include the authority to waive HUD regulations.

2. *Term of Re-delegation:* The Assistant Secretary for Housing may revoke this re-delegation of authority, in whole or part, at any time.

3. *No Further Re-delegation of Authority:* The authority re-delegated herein may not be further re-delegated.

Authority: Single Family Mortgage Insurance; Appraiser Roster Removal Procedures, 24 CFR part 200; Notice of Consolidated Delegations of Authority for Housing, 54 FR 22033, May 22, 1989, as amended.

Dated: July 19, 2001.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–18612 Filed 7–25–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Hold a 30-Day Scoping Period To Solicit Public Comments for a National Environmental Policy Act (NEPA) Decision on a Proposed Habitat Conservation Plan for the Lake Erie Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct a 30-day scoping period to solicit public comments for a NEPA decision on a proposed Habitat Conservation Plan and Incidental Take Permit for the Lake Erie water snake.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information relevant to the proposed Habitat Conservation Plan and Incidental Take Permit for the Lake Erie water snake. In addition, the Service is considering options for compliance with NEPA, which is required for completion of the Habitat Conservation Plan (HCP) and its associated Incidental Take Permit (ITP). Two options being considered to comply with NEPA are development of a categorical exclusion or an Environmental Assessment (EA). The Service is seeking substantive comments on several aspects of this proposed project: the appropriate level of NEPA review; identification of issues with the proposed development that should be considered in regard to the Lake Erie water snake; and identification of any other environmental issues that should be considered with regard to the proposed development and permit action. These comments will be considered by the Service in complying with the requirements of NEPA and in the development of an HCP.

A private developer is seeking an ITP for development of eight residential sites on 17 acres located on Long Point, Kelley's Island, Erie County, Ohio, which is located approximately 3 miles northeast of Marblehead, Ohio. Development is proposed to include eight primary residences, associated outbuildings, construction of a new access road, individual septic systems, and associated amenities.

A number of actions are proposed to minimize and mitigate taking and harming Lake Erie water snakes and their habitat. These measures include: seasonal restrictions on development and construction activities; a 125-foot protective setback from the ordinary high water mark of Lake Erie to remain in its current natural state for the protection and recovery of the Lake Erie water snake; abandonment of the west shoreline access road to increase shoreline shelter for the Lake Erie water snake; development of a new Long Point access road away from the Lake Erie shoreline to reduce road-kill mortality of Lake Erie water snakes; preservation of old foundations, concrete slabs, and piles of limestone rocks that presently occur on the Long Point, LLC property; placement of rocks and vegetation on the abandoned access road to increase shoreline shelter for Lake Erie water snakes and to prevent vehicle use; monetary support for Lake Erie water snake studies and monitoring; usage of architectural designs with minimal footprints; construction of an access road and driveways with minimal widths; and usage of signs posting speed restrictions along the Long Point access road. These measures are proposed to minimize and mitigate the effects of potential incidental take of Lake Erie water snakes to the maximum extent practicable, consistent with the otherwise lawful activity of residential construction on the Long Point, LLC property.

This notice is being furnished as provided for by the National Environmental Policy Act (NEPA) Regulations (40 CFR1501.7 and 1508.22). The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of issues to be considered. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received on or before August 27, 2001. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Public Involvement: The public is invited to participate in the scoping process. No public meetings are planned for this project but submission of written comments by either mail, facsimile, or electronic mail are encouraged. Comments should be submitted to the appropriate address shown below. Written scoping comments should be received by the closing date stated in the section above.

ADDRESSES: Comments should be addressed to: Ms. Angela Boyer, U.S. Fish and Wildlife Service, Reynoldsburg Field Office, 6950 Americana Parkway, Suite H, Reynoldsburg, OH 43068–4127. Electronic mail comments may also be submitted within the comment period to: *lewatersnake@fws.gov* or by facsimile to: (614) 469–6919.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Boyer, U.S. Fish and Wildlife Service, Reynoldsburg Field Office, 6950 Americana Parkway, Suite H, Reynoldsburg, OH 43068–4127, telephone: (614) 469–6923 extension 22, facsimile: (614) 469–6919.

SUPPLEMENTARY INFORMATION: The Lake Erie water snake (*Nerodia sipedon insularum*) was listed on August 30, 1999, by the Service as a threatened species under the Endangered Species Act of 1973, as amended (ESA). The population decline of this snake species is attributed to loss of shoreline habitat and the killing of snakes by people. The Lake Erie water snakes are an important member of Lake Erie's aquatic ecosystem. They live along shorelines of the western basin Lake Erie islands where they feed on small fish and amphibians. The snakes usually grow from 1 to 3.5 feet, in length.

The Service currently has no information regarding whether the approximately 17 acres site contains facilities which are eligible to be listed on the National Register of Historic Places or whether other historical, archaeological, or traditional cultural properties may be present. The National Historic Preservation Act and other laws require that any such properties and resources be identified and considered in project planning. The public is requested to inform the Service of concerns about archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Dated: July 2, 2001.

Robert Krska,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 01–18600 Filed 7–25–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CA–310–0777–AE

Notice of Resource Advisory Council Meeting

AGENCY: Northwest California Resource Advisory Council Redding, California, Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northwest California Resource Advisory Council will meet Wednesday and Thursday, Aug. 1 and 2, 2001, in Redding, California, for a field tour and business meeting. The tour and meeting are open to the public, but anyone participating in the tour must provide their own transportation and lunch.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. Wednesday, Aug. 1, at the BLM Redding Field Office, 355 Hemsted Dr., Redding. Members will convene, then depart immediately for a float trip in the Sacramento River Bend area, and discussions about special management considerations for this area. On Thursday, Aug. 2, the council will convene a business meeting at 8 a.m. in the Conference Room of the Redding Rancheria, 2000 Rancheria Rd, Redding, CA. Agenda topics will include recreation user fees, off highway vehicle guidelines, an overview of fire and fuels projects, Sacramento River management, and a review of the council charter. Council members will also hear status reports from the managers of the BLM's Arcata, Redding and Ukiah field offices. Time will be set aside for public comments. Depending on the number of persons wishing to speak, a time limit may be established.

FOR FURTHER INFORMATION: Contact Lynda J. Roush, BLM Arcata Field Manager, at (707) 825–2300; or Public Affairs Officer Joseph J. Fontana at (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 01–18680 Filed 7–25–01; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–435]

In the Matter of Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same; Notice That an Initial Determination Granting Complainants' Motion for Summary Determination That They Satisfy the Economic Prong of the Domestic Industry Requirement as to One Patent Has Become the Commission Determination by Operation of the Commission's Rules

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') granting complainants'' motion for summary determination that they satisfy the economic prong of the domestic industry requirement of section 337(a)(3) of the Tariff Act of 1930 as to U.S. Letters Patent 5,894,410 has become the determination of the Commission by operation of Commission rule 210.42(h)(3).

FOR FURTHER INFORMATION: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based section 337 investigation on August 17, 2000, based on a complaint filed by Intel Corp. (''Intel'') and Level One Communications, Inc. (''Level One''). The sole respondent named in the investigation is Altima Communications, Inc.

On February 26, 2001, complainants Intel and Level One moved pursuant to Commission rule 210.18 for summary determination that they satisfy the economic prong of the domestic industry requirement of section 337 as to U.S. Letters Patent 5,894,410.

On March 15, 2001, the ALJ issued an ID (Order No. 28) granting the motion. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 23, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–18669 Filed 7–25–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Biographic Information.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 24, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–325. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This form is used to check other agency records on application or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applicants for adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,144,994 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 286,249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: July 18, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–18634 Filed 7–25–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Petition for Amerasian, Widow(er), or Special Immigrant.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 24, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–360. Adjudications, Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 responses at (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: July 18, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–18635 Filed 7–25–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the

Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,222; Butterick Co., Inc., Altoona, PA
TA–W–38,999; Detroit Tool and Engineering, Lebanon, MO
TA–W–39,512; Royce Hosiery Mils, Inc., High Point, NC
TA–W–39,313; Lynn Electronics, Feasterville, PA
TA–W–39,230; Chahaya Optronics, Inc., Fremont, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–39,367; Computrex, Inc., Nicholasville, KY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,569; Alamac Knit Fabrics, Dyersburg Corp., Clinton, NC: June 20, 2000.
TA–W–39,314; Southern Glove Manufacturing Co., Inc., Mountain City Glove Div., Mountain City, TN: April 20, 2000.
TA–W–39,189; Southern Glove Manufacturing Co., Inc., Knitting Department, Newton, NC: April 20, 2000.
TA–W–39,391; BMH Chronos Richardson, Inc., Fairfield, NJ: May 17, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment the either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04880; Southern Glove Manufacturing Co., Inc., Mountain City Glove Div., Mountain City, TN
NAFTA–TAA–04801; Southern Glove Manufacturing Co., Inc., Knitting Department, Newton, NC
NAFTA–TAA–04884; Cooper Eagle Hosiery Mills, Inc., Hildebran, NC

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

NAFTA–TAA–04911; Computrex, Inc., Nicholasville, KY

Affirmative Determinations NAFTA–TAA

None

I hereby certify that the aforementioned determinations were issued during the month of July, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 13, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–18625 Filed 7–25–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,956]

CIBA Speciality Chemicals USA Old Bridge, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 2, 2001, in response to a worker petition which was filed on behalf of workers at CIBA Speciality Chemicals USA, Old Bridge, New Jersey.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C. this 16th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18628 Filed 7–25–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,557]

D.V. & P, Inc. New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 2, 2001, in response to a petition filed by a company official on behalf of workers at D.V. & P, Inc., New York, New York.

The petitioning worker group is the subject of an ongoing investigation for which a determination has not yet been issued (TA–W–39,371). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18630 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,384]

Electrolux, LLC Piney Flats, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 4, 2001, in response to a petition filed on behalf of workers at Electrolux, LLC, Piney Flats, Tennessee.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 13th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18629 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,732 and TA–W–38,732A]

Haggar Clothing Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 12, 2001, applicable to workers of Haggar Clothing Company, Edinburg Manufacturing, Edinburg, Texas and Haggar Clothing Company, Weslaco Operations, Weslaco, Texas. The notice was published in the **Federal Register** on May 2, 2001 (FR 66 22006).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's coats and pants. New information shows that some workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts: Haggar Clothing Company, Edinburg Manufacturing, Waxahachie Garment Company, Edinburg Direct Garment Company, Inc., and Haggar Clothing Company, Weslaco Operations, Weslaco Direct Cutting Co., Inc., Weslaco Cutting, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Haggar Clothing Company, Edinburg Manufacturing, Waxahachie Garment Company, Edinburg Direct Garment Company, Inc. and Haggar Clothing Company, Weslaco Operations, Weslaco Direct Cutting Company, Inc., Weslaco Cutting, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,732 and TA–W–38,732A are hereby issued as follows

All workers of Haggar Clothing Company, Edinburg Manufacturing, Waxahachie Garment Company, Edinburg Direct Garment Company, Inc., Edinburg, Texas (TA–W–38,732) and Haggar Clothing Company, Weslaco Operations, Weslaco Direct Cutting Company, Inc., Weslaco Cutting, Inc., Weslaco, Texas (TA–W–38,732A) who became totally or partially separated from employment on or after May 1, 2001 through April 12, 2003 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of July , 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18623 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,802, et al.]

Inman Mills; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification of Eligibility to Apply for Worker Adjustment Assistance on May 17, 2001, applicable to workers of Inman Mills, Inman, South Carolina. The notice was published in the **Federal Register** on May 25, 2001 (66 FR 28928).

At the request of the State agency and the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read ''Inman Mills, Inman Plant and Saybrook Plant, Inman, South Carolina''.

Findings also show that worker separations occurred at the subject firms' three Enoree, South Carolina facilities: Riverdale Plant, Mountain Shoals Plant and the Ramey Plant. The workers are engaged in the production of greige goods.

Worker separations also occurred at the subject firms' Corporate Office in Inman, South Carolina and at the New York Sales Office, New York, New York. The workers provide administrative support functions, purchasing, payroll and sales services for the subject firm.

Accordingly, the Department is amending the determination to properly reflect these matters.

The intent of the Department's certification is to include all workers of Inman Mills adversely affected by increased imports of greige goods.

The amended notice applicable to TA–W–38,802 is hereby issued as follows:

All workers of Inman mills, Inman Plant, Inman, South Carolina (TA–W–38,802); Saybrook Plant, Inman, South Carolina (TA–W–38,802A); Riverdale Plant, Enoree, South Carolina (TA–W–38,802B); Mountain Shoals

Plant, Enoree, South Carolina (TA–W–38,802C); Ramey Plant, Enoree, South Carolina (TA–W–38,802D); Corporate Office, Inman, South Carolina (TA–W–38,802E) and New York Sales Office, New York, New York (TA–W–38,802F) who became totally or partially separated from employment on or after February 23, 2000, through May 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 16th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18622 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,862]

K & R Sportswear Now Known as K & R Kids, LLC, Spring Hope, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 10, 2000, applicable to workers of K & R Sportswear, Spring Hope, North Carolina. The notice was published in the **Federal Register** on August 1, 2000 (65 FR 46954).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of children's swimwear. The company reports that in August–September, 2000, K & R Sportswear was purchased by Amerex Group, Inc. and became known as K & R Kids, LLC and continues to layoff workers.

Accordingly, the Department is amending the certification determination to correctly identify the new ownership to read K & R Sportswear now known as K & R Kids, LLC, Spring Hope, North Carolina.

The intent of the Department's certification is to include all workers of K & R Sportswear now known as K & R Kids, LLC who were adversely affected by increased imports of children's swimwear.

The amended notice applicable to TA–W–37,862 is hereby issued as follows:

''All workers of K & R Sportswear, now known as K & R Kids LLC, Spring Hope, North Carolina who became totally or partially separated from employment on or after June 21, 1999, through July 10, 2002, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 16th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18624 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,366]

Mattel, Inc. Murray Production Facility Murray, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 4, 2001, in response to a petition filed on behalf of workers at Mattel, Inc., Murray Production Facility, Murray, Kentucky.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18631 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4895]

Northern Engraving Corporation, Galesville, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 11, 2001, in response to a worker petition which filed by workers on behalf of workers at Northern Engraving Corporation, Galesville, Wisconsin.

During the initial petition verification, the Department learned that the petitioners were not employees of Northern Engraving Corporation. Consequently, the petition is invalid and the petition investigation has been terminated.

Signed in Washington, DC this 10th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18627 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,372]

Rockwell Collins Passenger Systems Pomona, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, and investigation was initiated on June 4, 2001, in response to a petition filed by a company official on behalf of workers at Rockwell Collins, Passenger Systems, Pomona, California.

The petition group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–39,179). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18626 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 011; et al.]

Texas Boot, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 19, 2001, applicable to workers of Texas Boot, Inc., Hartsville, Tennessee and Nashville, Tennessee. The notice was published in

the **Federal Register** on July 5, 2001 (66 FR 35463).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Waynesboro Manufacturing Plant, Waynesboro, Tennessee and the Distribution Center, Lebanon, Tennessee locations of the subject firm. Workers at the Waynesboro, Tennessee location are engaged in the production of western boots. The Lebanon, Tennessee location is a raw material warehouse and distribution center for the Waynesboro, Tennessee location.

Based on these findings, the Department is amending the certification to include workers of the Waynesboro Manufacturing Plant, Waynesboro, Tennessee and the Distribution Center, Lebanon, Tennessee.

The intent of the Department's certification is to include all workers of Texas Boot, Inc., who were adversely affected by increased imports of western boots.

The amended notice applicable to TA–W–39,011 is hereby issued as follows:

All workers of Texas Boot, Inc., Hartsville, Tennessee (TA–W–39,011), Corporate Headquarters, Nashville, Tennessee (TA–W–39,011A), Waynesboro Manufacturing Plant, Waynesboro, Tennessee (TA–W–39,011B) and Distribution Center, Lebanon, Tennessee TA–W–39,011C) who became totally or partially separated from employment on or after June 16, 2001 through June 19, 2003 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 11th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18621 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04603]

IEC Electronics Corporation, Edinburg, TX; (Including Temporary Workers), Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 17, 2001, applicable to workers of IEC Electronics Corporation, Edinburg, Texas. The notice published in the **Federal Register** on May 9, 2001 (66 FR 23734).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that some employees at the subject firm plant were temporary workers from Manpower Temporary Services of Texas and Express Personnel Services, McAllen, Texas and Staff Force Personnel Services, Edinburg, Texas; the workers of these firms produce printed circuit boards at the Edinburg, Texas location of the subject firm.

Based on these findings, the Department is amending the certification to include temporary workers of Manpower Temporary Services of Texas and Express Personnel Services, McAllen, Texas and Staff Force Personnel Services, Edinburg, Texas who were engaged in the production of printed circuit boards at IEC Electronics Corporation, Edinburg, Texas.

The intent of the Department's certification is to include all workers of IEC Electronics Corporation, Edinburg, Texas adversely affected by a shift of production of printed circuit boards to Mexico.

The amended notice applicable to NAFTA–04603 is hereby issued as follows:

All workers of IEC Electronics Corporation, Edinburg, Texas, and temporary workers at Manpower Temporary Services of Texas and Express Personnel Services, McAllen, Texas, and Staff Force Personnel Services, Edinburg, Texas who were engaged in the production of printed circuit boards at IEC Electronics Corporation, Edinburg, Texas, who became totally or partially separated from employment on or after February 21, 2000, through April 17, 2003, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of July, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–18620 Filed 7–25–01; 8:45 am]

BILLING CODE 4510–30–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 19, 2001.

TIME AND DATE: 10:30 a.m., Thursday, July 26, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. George Colliers, Inc., Docket Nos. CENT 2000–65, etc. (Issues include whether the judge erred in declining to consider evidence of the operator's financial condition with regard to the effect of the penalty on the operator's ability to continue in business).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–18779 Filed 7–24–01; 12:17 pm]

BILLING CODE 6735–01–M

PRESIDIO TRUST

The Presidio of San Francisco, California; Notice of Availability To Review and Announcement of Public Hearings To Comment on the Draft Environmental Impact Statement for the Presidio Trust Implementation Plan

AGENCY: The Presidio Trust.

ACTION: Notice of availability to review and announcement of public hearings to comment on the draft Environmental Impact Statement (EIS) for the Presidio Trust Implementation Plan (PTIP), an update to the July 1994 Final General Management Plan Amendment (GMPA) for the portion of The Presidio of San Francisco (Presidio) under the jurisdiction of the Presidio Trust (Trust). The PTIP EIS supplements the GMPA Environmental Impact Statement adopted by the National Park Service for the Presidio in 1994.

Abstract: Congress created the Trust under the Presidio Trust Act (16 U.S.C. 460bb Appendix, Title I of Pub. L. 104–333, 110 Stat. 4097), as amended (Trust Act), to manage Presidio facilities so as

to make them financially self-sufficient by year 2013 and to protect the Presidio's resources by ensuring long-term financial sustainability. The PTIP EIS describes and analyzes a proposed action, the ''Draft Plan,'' and five alternatives that have been developed to address Trust Act requirements, changed circumstances since the GMPA was completed, and new policies and management approaches of the Trust. The five alternatives to the ''Draft Plan,'' each described in greater detail below, are: ''No Action,'' ''Resource Consolidation,'' ''Sustainable Community,'' ''Cultural Destination'' and ''Minimum Management.'' Each of the six alternatives presented in the EIS achieves the Trust Act's goals to varying degrees and has a different emphasis. Principal differences include the proposed total building square footage, the proposed amount of non-residential and residential uses, the proposed amount of open space and the proposed method of delivery of public programs. The maximum overall square footage of 5,960,000 allowed under the Trust Act would not be exceeded under any alternative.

The ''Draft Plan'' alternative was developed and refined based on public input received during the scoping period. Under the Draft Plan, the Presidio would become a center for education, communication and exchange. Buildings would be removed to increase open space, and no net loss of housing units would be achieved, by emphasizing the rehabilitation and reuse of existing buildings.

Under the ''No Action,'' or GMPA 2000 alternative, the Trust would implement the GMPA assuming current (year 2000) conditions. Buildings would be removed to increase open space and enhance natural resources, and available housing would decrease substantially. Tenants with a mission related to environmental, social or cultural concerns would offer public programs related to their business mission.

Under the ''Resource Consolidation'' alternative, the Presidio would become an enhanced open space haven in the center of urban surroundings by maximizing open space in the south through the removal of historic and non-historic structures.

Under the ''Sustainable Community'' alternative, the Presidio would become a sustainable live/work community in a park setting with a small decrease in housing units, would retain its present dispersed pattern of development, and would emphasize building reuse and rehabilitation.

Under the ''Cultural Destination'' alternative, the Presidio would become a national and international destination park by providing robust public programming delivered through the Trust. A substantial level of building demolition in the south would be replaced in the north to provide an increase in and improved mix of housing and to cluster housing near work and transit.

Under the ''Minimum Management'' alternative, there would be no significant physical change beyond that already underway, and the Presidio would be minimally managed to meet minimum legal requirements.

Major impact topics addressed in the EIS include historic resources, cultural landscape, archaeology, biological resources, water resources, visual resources, air quality, noise, land use, socioeconomic issues, visitor experience, recreation, public safety, transportation, water supply, utilities, Trust operations, and cumulative impacts.

Materials Available to the Public: The EIS is being sent to agencies, organizations and individuals who have expressed an interest in such information. Copies of the EIS are available by calling 415/561–5414 or by writing the Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052. The EIS may also be reviewed in the Trust's library at 34 Graham Street, San Francisco, CA, and is available electronically on the Trust's website (www.presidiotrust.gov). A CD–ROM version may be obtained by calling or writing to the Trust.

Public Meetings: Information on the EIS will be provided and oral comment will be received at the following public meetings:

- August 28, 2001—7:30 p.m. Golden Gate National Recreation Area Citizens' Advisory Commission Meeting, Building 201, Upper Fort Mason, San Francisco, CA.
- September 11, 2001—6 p.m. to 9 p.m. Presidio Trust Public Hearing, 135 Fisher Loop (Golden Gate Club), The Presidio of San Francisco, CA.
- September 17, 2001—1 p.m. to 4 p.m. Presidio Trust Board of Directors meeting, 50 Moraga Avenue (Officers' Club), The Presidio of San Francisco, CA.

Comments: The public review period for the EIS ends on September 25, 2001. Written comments should be sent to: PTIP, c/o John Pelka, NEPA Compliance Manager, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415/561–2716; e-mail: ptip@presidiotrust.gov.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Manager, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414.

Dated: July 20, 2001.

Karen A. Cook,

General Counsel.

[FR Doc. 01–18633 Filed 7–25–01; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Opinion Research Corporation, Common Stock, $.01 Par Value) File No. 1–14927

July 20, 2001.

Opinion Research Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange (''Amex'').

The Board of Directors (''Board'') of the Issuer approved a resolution on June 29, 2001 to withdraw the Security from listing on the Exchange and to list the Security on the Nasdaq Stock Market (''Nasdaq''). The issuer represented that trading in the Security was scheduled to begin on the Nasdaq at the opening of business on July 18, 2001. The Issuer has stated that the Board took such action, in response to the Issuer's investors, to increase its visibility to investors and improve the Security's liquidity.

The Issuer has stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act[3] and shall affect neither its approval for trading on the Nasdaq nor its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before August 10, 2001, submit by letter

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–18641 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27428]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 20, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 14, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 14, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Progress Energy, Inc., et al. (70–9863)

Progress Energy, Inc. (''Progress Energy''), a registered holding company under the Act, Carolina Power & Light Company (''CP&L''), a public utility company subsidiary of Progress Energy, Progress Energy Ventures, Inc. (''Ventures''), a nonutility intermediate holding company subsidiary of Progress Energy, Richmond County Power, LLC (''Richmond,''), a wholly owned, inactive subsidiary of CP&L, Florida Power Corporation (''Florida Power''), a public utility company subsidiary of Progress Energy, North Carolina Natural Gas Corporation (''NCNG''), a gas utility subsidiary company of Progress Energy, Progress Energy Service Company, LLC (''Services''), a service company subsidiary of Progress Energy, Monroe Power Company (''Monroe''), subsidiary company of Progress Energy and presently an exempt wholesale generator (''EWG'') as defined in section 32 of the Act, and CP&L NewCo (''NewCo''), a company to be formed by CP&L, (together, ''Applicants''), all located at 411 Fayetteville Street Mall, Raleigh, North Carolina 27602, have filed an application-declaration (''Application'') under sections 3(a)(1), 6(a), 7, 9(a), 10, 11(b)(2), 12, 13(b), and 32 under the Act and rules 43, 44, 45, 46, 53, 54, 58, 88, 90 and 91 under the Act.

I. Summary of Requests

Applicants seek authority for: (1) CP&L to transfer its interests in certain electric generation assets [1] (''Richmond Facility'') to Richmond; (2) CP&L to transfer its interests in Richmond to Ventures through a series of transactions explained in detail below; (3) Richmond to enter in various financing transactions within aggregate limitations authorized for the Progress Energy system by order dated December 12, 2000 (HCAR No. 27297) (''December Order''); (4) Richmond to issue additional types of securities; (5) Ventures to be granted exemption from registration under section 3(a)(1) of the Act; (6) the retention of Monroe and NewCo as intermediate holding companies; (7) Monroe and Newco to be granted exemption from registration under section 3(a)(1) of the Act; (8) the acquisition by Richmond of special purpose financing subsidiaries (''Richmond Financing Subsidiaries''); (9) the addition of Richmond to the utility money pool (''Utility Money Pool'') authorized in the December Order; (10) the reservation of jurisdiction over the addition of Richmond to the Progress Energy tax allocation agreement; and (11) certain service transactions involving wholesale generation utility and nonutility subsidiaries under section 13(b) of the Act.

A. Restructuring

Applicants request authority for CP&L to transfer and Richmond to acquire the Richmond Facility, with Richmond then becoming a public utility subsidiary of CP&L. Applicants further intend that Richmond be moved to a different placement in the Progress Energy system through a series of transactions (''Restructuring''). The Restructuring is expected to take place as follows: (1) Progress Energy will contribute its stock in Ventures to Monroe; (2) CP&L will contribute the Richmond Facility to Richmond; (3) CP&L will form NewCo as a new, wholly owned subsidiary, (4) CP&L will contribute its membership interests in Richmond to NewCo in exchange for the acquisition of all NewCo stock; (5) CP&L will distribute the NewCo stock to Progress Energy; (6) the Monroe stock will be contributed to NewCo; and (7) NewCo will contribute the Richmond membership interests down the corporate chain to Ventures. Applicants request authority to retain Monroe and NewCo in place as intermediate holding companies after the Restructuring in order for the Restructuring to be exempt from federal tax under section 355 of the Internal Revenue Code.

B. Richmond Financing Subsidiaries

Applicants request authority for Richmond to acquire the securities and organize one or more Richmond Financing Subsidiaries to issue Preferred Securities, Debentures, Short-Term Debt and Long-Term Debt. The Richmond Financing Subsidiaries will be organized solely to issue securities to support Richmond's businesses. Applicants state that the Richmond Financing Subsidiaries will dividend, loan, or otherwise transfer proceeds of a financing only to Richmond.

[5] 17 CFR 200.30–3(a)(1).

[1] The Richmond Facility consists of the following assets (or rights to acquire such assets): eight GE 7F combustion turbines; six heat recovery steam generators; three steam turbines; one station service transformer; steam condensers and cooling towers; one gas pipeline spur; and a water supply, treatment and transportation system. The Richmond Facility assets also include, or will include, contracts for wholesale sales of electricity, construction, operation and maintenance, fuel, and other contracts, as well as governmental permits and approvals and real property interests, directly related to and necessary for facility construction and operation. As of December 31, 2000, the Richmond assets had a book value of $145,324,232.

C. Richmond Financing Requests

Applicants request authority for Richmond to issue and sell directly, or indirectly through the Richmond Financing Subsidiaries, preferred securities (''Preferred Securities''); debentures (''Debentures''); short-term debt (''Short-Term Debt''); and long-term debt (''Long-Term Debt''), which may be in the form of secured guarantees (''Secured Guarantees''), unsecured guarantees (''Unsecured Guarantees''), and notes (''Notes'').

1. Preferred Securities

Applicants request authority for Richmond to issue Preferred Securities in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by Richmond's board of directors. All Preferred Securities will be redeemed no later than fifty years after the date of issuance. The dividend rate on any series of Preferred Securities will not exceed, at the time of each issuance, the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of the series of Preferred Securities and (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

2. Debentures

Debentures will have maturities ranging from one to fifty years. The interest rate on Debentures will not exceed, at the time of each issuance, the greater of (a) 300 basis points over U.S. Treasury securities having comparable maturities and (b) a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Applicants state all Debentures will be maintained at investment grade as established by a nationally recognized statistical rating organization.

The amount of Preferred Securities and Debentures issued by Richmond and those issued by the Richmond Financing Subsidiaries which are guaranteed by Richmond, will count toward, and will not exceed, the $3.8 billion aggregate limitation on Preferred Securities and Debentures authorized by the Commission for issuance by Progress Energy in the December Order.

3. Short-Term Debt

Applicants request authority for Richmond to issue Short-Term Debt, which may take the form of commercial paper, promissory notes, and/or other forms of indebtedness that will be sold to dealers at the annual discount rate prevailing at the date of the sale for commercial paper of comparable quality and maturities. Short-Term Debt may also include notes and other forms of indebtedness under lines of credit from banks. Applicants state that commercial paper Short-Term Debt will mature in one year or less from the date of issuance and borrowing under lines of credit will mature in two years or less from the date of the borrowing. The effective cost of money on Short-Term Debt will not exceed, at the time of issuance, 300 basis points over the London Interbank Offered Rate for maturities of one year or less. The amount of Short-Term Debt that Applicants propose Richmond will incur will count toward, and will not exceed, the $1 billion aggregate limitation on Short Term Debt authorized for Progress Energy by the Commission in the December Order.

4. Long Term Debt

Applicants request authority for Richmond to issue Long-Term Debt in an amount not to exceed $1 billion of indebtedness at any one time during the Authorization Period. Applicants request authority for Richmond to issue and reissue notes with a maturity of up to 20 years.

(a) *Secured and Unsecured Guarantees.* In connection with the request to issue Long-Term Debt, Applicants request authority for Richmond to issue Secured Guarantees or Unsecured Guarantees on similar obligations of affiliate or associate companies, and in particular, the Progress Energy system EWGs. Security for Secured Guarantees may include a security interest in all of Richmond's rights, title, and interest to its present and future assets, including all project agreements and permits relating to the Richmond Facility to which Richmond is a party and all of Richmond's goods, inventory, equipment, revenues, accounts, and all amounts maintained therein, receivables, and all Richmond's other property, assets, and revenues. The interest rate on Richmond's Long-Term Debt will not exceed, at the time of issuance, 500 basis points over the yield to maturity of a U.S. Treasury Note having comparable maturities. Secured and Unsecured Guaranties by Richmond will not be counted against either the Progress Energy or the Progress Energy nonutility subsidiary guaranty limit authorized under the December Order.[2]

D. Utility Money Pool

Applicants request authority for Richmond to participate in the Progress Energy utility money pool (''Utility Money Pool'') established under authority granted in the December Order. Applicants propose that Richmond, CP&L and NCNG would lend to each other, as well as borrow from Progress Energy, Florida Power and each other, and for Florida Power and Progress Energy to lend to Richmond, CP&L and NCNG, through the Utility Money Pool. Applicants request authority for Richmond to borrow through the Utility Money Pool up to $250 million at any time outstanding. Loans will be repayable on demand and, in any event, not later than one year after the date of the loan. All other items, conditions and operational arrangements of the Utility Money Pool will remain as described in the December Order.

E. Proposed Service Agreements With Service Company and Retail Companies

Applicants propose that Progress Energy Service Company, LLC (''Services''), a service company approved by order dated November 27, 2000 (HCAR No. 27284) (''November Order'') under section 13 of the Act and rule 88 under the Act, will provide a wide range of services to Richmond on an as-needed basis in accordance with the Progress Energy system utility service agreement (''Utility Service Agreement'') also approved in the November Order. Personnel employed by the Retail Companies also will provide certain services to Richmond according to utility service agreements in the form of the Utility Service Agreement and/or according to an operating agreement (''Operating Agreement'') between Richmond and Florida Power and CP&L (together ''Retail Companies'') or pursuant to other arrangements that comply with section 13(b) of the Act and the Commission's rules under the Act concerning system services. Personnel employed by the Retail Companies will provide, consistent with section 13(b)

[2] Although it will be an electric utility company under section 2(a)(3) of the Act, Applicants expect that Richmond will sell electric power only at wholesale. Therefore, Richmond will not be a public utility for purposes of state law, and no state commission will have jurisdiction over financing transactions requested in this application-declaration. Applicants may not use rule 52 to exempt these financing transactions under the Act.

and the Commission's service company rules, rule 53(a)(3), and the Commission's authorization in CP&L Energy, Inc., Holding Co. Act Release No. 27284 (Nov. 27 2000), similar operations services under the Operating Agreement to EWGS that may be developed and owned, directly or indirectly, by Progress Energy Ventures.

Services and the Retail Companies will render services to Richmond, at cost computed in accordance with section 13(b) and rules 90 and 91 under the Act. These services will include general executive and advisory services; power operations; general engineering; design engineering; purchasing; accounting, finance and treasury services; tax counseling; counseling on insurance and pensions; other corporate services relating to rates, budgeting, public relations, employee relations, systems and procedures; and other services with respect to business and operations.

F. Income Tax Allocation Agreement

Applicants proposed that Richmond participate in the Progress Energy income tax allocation agreement currently subject to a reservation of jurisdiction by the Commission under the December Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18640 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25070; 812–11992]

The Gabelli Equity Trust Inc., et al.; Notice of Application

July 20, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any preferred stock outstanding. The order would supersede a prior order (''Prior Order'').[1]

Applicants: The Gabelli Equity Trust Inc. (''GET''), The Gabelli Global Multimedia Trust Inc. (''GGMT''), The Gabelli Convertible Securities Fund, Inc. (''GCSF''), The Gabelli Utility Trust (''GUT'' and together with GET, GGMT and GCSF, the ''Existing Funds''), Gabelli Funds, LLC (''Gabelli''), and each registered closed-end management investment company advised in the future by Gabelli (including an successor in interest,[2] or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Gabelli (the ''Future Funds'' and together with the Existing Funds, the ''Funds'').[3]

Filing Dates: The application was filed on February 22, 2000 and amended on June 22, 2001 and July 18, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 14, 2001 and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Richard T. Prins, Esq., Skaden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036–6522.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. GET, GGMT and GUT are non-diversified, closed-end management investment companies registered under the Act. GCSF is a diversified, closed-end management investment company registered under the Act. GET, GGMT and GCSF are organized as Maryland corporations. GUT is organized as a Delaware business trust. GET's primary investment objective is to seek long-term growth of capital by investing at least 65% of its total assets in a portfolio of equity securities. GGMT's investment objective is long-term growth of capital by investing in securities of foreign and domestic companies in the telecommunications, media, publishing and entertainment industries. GCSF's investment objective is to seek a high level of total return on its assets by investing primarily in convertible securities. GUT's investment objective is long-term growth of capital and income, primarily through investing in equity securities of companies in the utility industry. GET's GGMT's and GCSF's common and preferred stock, and GUT's common stock, are listed and traded on the New York Stock Exchange. Gabelli, an investment adviser registered under the Investment Advisers Act of 1940, serves as each Existing Fund's investment adviser.

2. On November 15, 2000, the board of directors of each Existing Fund (''Board''), including a majority of the members who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''disinterested directors''), of such Fund, concluded that the distribution policy of such Fund would be in the best interests of the Fund's shareholders (''Distribution Policy'').[4] The Distribution Policy would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock and as often as distributions are specified in the terms of its preferred stock, so long as it maintains in effect a Distribution Policy (a) with regards to its common stock of at least a minimum fixed percentage per year of the net asset value (''NAV'') or market price per share of its common stock or at least a

[1] Gabelli Equity Trust Inc., et al., Investment Company Act Release Nos. 23051 (Feb. 27, 1998) (notice) and 23072 (Mar. 23, 1998) (order).

[2] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All existing registered closed-end management investment companies that currently intend to rely on the requested order are named as applicants and any Future Fund that may rely on the order in the future will comply with the terms and conditions of the application.

[4] Applicants state that the Board of each Future Fund intending to rely on the requested order, including a majority of its disinterested directors, will make a similar finding prior to implementing a distribution policy in reliance on the order.

minimum fixed dollar amount per year, and (b) with regards to each series of its preferred stock of a specified percentage of liquidation preference, whether such specified percentage is determined at the time the preferred stock is initially, pursuant to periodic remarketing or auctions or otherwise. Applicants believe that the discount at which each Fund's common stock may trade may be reduced if the Funds are permitted to pay capital gains dividends more frequently than permitted under rule 19b–1 under the Act. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, such Fund is at a competitive disadvantage and, consequently, is likely to be required to pay a higher dividend rate on its preferred stock than issuers who pay at the desired frequency.

3. Applicants state that the Distribution Policy with respect to preferred stock of the Funds and the Distribution Policy with respect to common stock of the Funds will not be related to one another in any way. Applicants state that the Distribution Policy with respect to each Fund's common stock will be initially established and reviewed at least annually in light of the Fund's performance by the Board of the Fund.

4. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding. The requested order would supersede the Prior Order that permitted the Funds to make quarterly distributions of long-term capital gains.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders at the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make with respect to any one year, would prevent implementation of the Funds' proposed Distribution Policy. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89–81 and the accounting interpretation relating to rule 19b–1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89–81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, have been fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a–1 under the Act, a statement showing the source or sources of the distribution accompanies and will accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the year has been or will be included on each Fund's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also has been, or will be, included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the divided'') where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly actually help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to a specific period dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities, or transactions from any provision of the

Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

Applicants' Condition

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18639 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25069; 812–12522]

The Pillar Funds, et al.; Notice of Application

July 20, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'')

ACTION: Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY: Applicants request an order to permit certain series of The Galaxy Fund (''Galaxy'') and Galaxy Fund II (''Galaxy II'') to acquire substantially all of the assets and liabilities of certain series of The Pillar Funds (''Pillar'') (the ''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Galaxy, Galaxy II, Pillar and Fleet Investment Advisors Inc. (''Fleet'').

Filing Dates: The application was filed on May 18, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 14, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Galaxy and Galaxy II, 4400 Computer Drive, Westborough, MA 01581–5108. Pillar, 101 Federal Street, Boston, MA 02110, Fleet, 100 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Staff Attorney, at 202–942–0553, or Mary Kay Frech, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Pillar, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of 17 series, 16 of which will participate in the Reorganization (the ''Acquired Funds'').[1]

2. Galaxy, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy currently offers 37 series, 12 of which will participate in the Reorganization (the ''Operating Galaxy Funds'').[2] Galaxy is also organizing three new shell series, each of which will participate in the reorganization (the ''Shell Acquiring Funds'' and together with the Operating Galaxy Funds, the ''Galaxy Funds'').[3]

3. Galaxy II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy II currently offers five series, one of which, the Galaxy II Large Company Index Fund, will participate in the Reorganization (together with the Operating Galaxy Funds, the ''Operating Acquiring Funds''). The Operating Acquiring Funds and the Shell Acquiring funds are referred to collectively as the ''Acquiring Funds.'' Each of the Acquiring funds and each of the Acquired Funds are referred to individually as a ''fund'' and collectively as the ''funds.'' applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund.

4. Fleet, a subsidiary of FleetBoston Financial Corporation (''FleetBoston''), is registered as an investment adviser under the Investment Advisers act of 1940 (the ''Advisers Act''). Fleet serves as investment adviser to the Operating Acquiring Funds and the Acquired

[1] The Acquired Funds are (1) Pillar U.S. Treasury Securities Money Market Fund, (2) Pillar U.S. Treasury Securities Plus Money Market Fund, (3) Pillar Prime Obligation Money Market Fund, (4) Pillar Institutional Select Money Market Fund, (5) Pillar Tax-Exempt Money Market Fund, (6) Pillar Intermediate-Term Government Securities Fund, (7) Pillar Fixed Income Fund, (8) Pillar New Jersey Municipal Securities Fund, (9) Pillar Balanced Fund, (10) Pillar Equity Income Fund, (11) Pillar Mid Cap Fund and (12) Pillar International Equity Fund, (13) Pillar Pennsylvania Municipal Securities Fund, (14) Pillar Equity Value Fund, (15) Pillar Equity Growth Fund and (16) Pillar Equity Index Fund. The one remaining series Pillar High Yield Bond Fund will Liquidate and dissolve in early August 2001.

[2] The Operating Galaxy Funds are (1) Galaxy U.S. Treasury Money Market Fund, (2) Galaxy Institutional Treasury Money Market Fund, (3) Galaxy Money Market Fund, (4) Galaxy Institutional Money Market Fund, (5) Galaxy Tax-Exempt Money Market Fund, (6) Galaxy Intermediate Government Income Fund, (7) Galaxy High Quality Bond Fund, (8) Galaxy New Jersey Municipal bond Fund, (9) Galaxy Asset Allocation Fund, (10) Galaxy Equity Income Fund, (11) Galaxy Growth Fund II and (12) Galaxy International Equity Fund.

[3] The Shell Acquiring Funds are (1) Galaxy Pennsylvania Municipal Bond Fund, (2) Galaxy Large Cap Value Fund and (3) Galaxy Large Cap Growth Fund. The registration statement for the shares of the Shell Acquiring Funds was filed with the Commission on May 18, 2001, and it is anticipated that it will be declared effective on or about August 1, 2001.

Funds, and will serve as investment adviser to the Shell Acquiring Funds Following the Reorganization.

5. Currently, Fleet and certain of its affiliates that are under common control with FleetBoston (collectively, the ''Fleet Boston Group'') hold of record, in their names or in the names of their nominees more than 5% (and in some cases more than 25%) of the outstanding voting securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain companies in the Fleet Boston Group may, at times, own economic interests in certain of the Funds that are money market funds for their own account. Some of these securities are held for the benefit of employee benefit plans for employees of FleetBoston and its affiliates.

6. On April 2, 2001, the board of trustees of Galaxy II (the ''Galaxy II Board''), including the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''Disinterested Trustees''), unanimously approved a plan of Reorganization for the Pillar Equity Index fund and the Galaxy II Large Company Index Fund. On March 1, 2001, the board of trustees of Galaxy (the ''Galaxy Board''), including the Disinterested Trustees, unanimously approved a plan of Reorganization for the remainder of the Acquired funds and the Galaxy Funds. The board of trustees of the Acquired Funds (The ''Acquired Funds' Board''), including the Disinterested Trustees, unanimously approved plans of Reorganization for the Pillar Equity Index Fund and the Galaxy II Large Company Index fund on April 6, 2001, and for the remainder of the Acquired Funds and the Galaxy Funds on March 9, 2001. Pursuant to the plans of Reorganization (each a ''Plan of Reorganization'' and together, the ''Plans of Reorganization''), substantially all of the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquired Fund in exchange for shares of designated classes of the corresponding Acquired Fund.[4] Each Acquired Fund will distribute the Acquired Fund shares received in the Reorganization to its shareholders.

7. The number of Acquiring Funds shares to be issued to shareholders of an Acquired Fund will be determined by dividing the aggregate net assets of the Acquired Fund by the net asset value per corresponding class of shares of the corresponding Acquired Fund, each computed as of the close of business immediately prior to the effective time of the Reorganization (the ''Effective Time''). The assets of each Acquired Fund and each Acquiring Fund will be valued in accordance with their respective valuation procedures as set forth in their respective then-current prospectuses and statements of additional information. Acquiring Fund shares will be distributed pro rata to the shareholders of record of the corresponding class of the Acquired Fund, determined as of the Effective Time. This distribution will be accomplished by an instruction, signed by an appropriate officer of each Acquired Fund, to transfer the Acquiring Fund shares, which are credited to the Acquired Fund's account on the books of the Acquiring Fund, to open accounts on the books of the Acquiring Fund, which accounts are established and maintained by the Acquiring Fund's transfer agent in the names of record of the Acquired Fund shareholders. The Acquiring Fund shares transferred represent the respective number of shares of the Acquiring Fund due Acquired Fund shareholders. Simultaneously, all issued and outstanding shares of the Acquired Funds will be canceled on the books of each Acquired Fund. Each of the Acquired Funds thereafter will be dissolved.

8. The Reorganization is expected to occur on or about August 17, 2001. Each Plan of Reorganization may be terminated by mutual consent of both parties any time prior to the Effective Time, or by one party if, prior to the Effective Time, certain conditions are not met and a majority of the party's board of trustees votes to terminate the Plan of Reorganization.

9. The Reorganization will involve three classes of share offered by the Acquired Funds (Class A Shares), Class B Shares and Class I Shares,[5] five classes of shares offered by Galaxy (Class I Shares, Class III Shares, Trust Shares, Retail A Shares and Retail B Shares),[6] offered by Galaxy II. As a result of the Reorganization, holders of the Pillar Treasury Securities Plus Money Market Fund and the Pillar Institutional Select Money Market Fund will receive, respectively, Class III Shares and Class I Shares of the corresponding Acquiring Funds. Holders of Class A Shares and Class I Shares of the Pillar Pennsylvania Municipal Securities Fund will received Trust Shares of the Acquiring Fund. Holders of the Pillar Equity Index Fund will receive Shares of the Galaxy II Large Company Index Fund. With respect to the remainder of the Acquired Funds, holders of Class A Shares will receive Retail A Shares of the corresponding Acquiring Fund, holders of Class B Shares of the corresponding Acquiring Fund and holders of Class I Shares will receive Trust Shares of the corresponding Acquiring Fund. Applicants state that the rights and obligations of the shares of the Acquired Funds are substantially similar to those of the corresponding classes of shares of the Acquiring Funds to be issued in the Reorganization.

10. No sales charges will be imposed in connection with the Reorganization. For purposes of calculating any contingent deferred sales charge (''CDSC''), holders of Class A Shares or Class B Shares of an Acquired Fund will be deemed to have held the Retail A Shares or Retail B Shares of the Acquiring Fund received in the Reorganization since the date such shareholder initially purchased the shares of the Acquired Fund and will incur CDSCs based on the CDSC schedule of the Acquired Fund.

11. The Acquired Funds' Board and the Galaxy Board and the Galaxy II Board (the Galaxy Board and the Galaxy II Board together, the ''Acquiring Funds' Boards''), including all of the Disinterested Trustees of each board of trustees, found that participation in the Reorganization was in the best interest of, respectively, each of the Acquired Funds and each of the Acquiring Funds, and that the interests of existing shareholders in those Funds would not be diluted as a result of the Reorganization. In approving the Reorganization, the Acquired Funds' Board and the Acquiring Funds' Boards considered, among other things, the following: (a) The expected cost savings for certain of the Acquired Funds; (b) the increase in the number of portfolio options available to shareholders of the

[4] Each of the Acquired Funds is listed in footnote 1, *supra*, and its corresponding Acquired Funds is listed with the same number in footnote 2, *supra*. The four other Acquired Funds and their corresponding Acquired Funds are as follows: (1) Pillar Pennsylvania Municipal securities Fund and Galaxy Pennsylvania Municipal Bond Fund, (2) Pillar Equity Value Fund and Galaxy Large Cap Value Fund, (3) Pillar Equity growth Fund and Galaxy Large Cap Growth Fund and (4) Pillar Equity Index Fund and Galaxy II Large Company Index Fund.

[5] The Pillar Prime Obligation Money Market Fund offers a fourth class of shares, Class S shares, which will be liquidated prior to the Reorganization.

[6] Certain of the Galaxy Funds are authorized to issue other classes of shares (Prime A Shares, Prime B Shares, BKB Shares and Class II Shares) not involved in the Reorganization.

Acquired Funds after the Reorganization; (c) the well-developed distribution network and shareholder servicing arrangements of the Acquiring Funds; (d) the capabilities, practices and resources of Fleet and other service providers to the Acquiring Funds; (e) the investment advisory and other fees projected to be paid by the Acquiring Funds and the projected expense ratios of the Acquiring Funds as compared with those of the Acquired Funds; (f) the investment objectives, policies and limitations of the Acquired Funds and their compatibility with those of the corresponding Acquiring Funds; (g) the terms and conditions of the Plan(s) of Reorganization; (h) the anticipated tax-free status of the Reorganization; (i) the past performance of the Acquired Funds and the Acquiring Funds and the strength of the Galaxy brand; and (j) the larger asset base of Galaxy.

12. Pillar will assume all expenses incurred by the Funds in connection with the reorganization, except that Fleet or one of its affiliates will bear the following expenses: (a) expenses allocated to the Pillar Institutional Select Money Market Fund, Pillar Balanced Fund, Pillar Equity Index Fund, Pillar Equity Value Fund, Pillar Equity Growth Fund and Pillar MidCap Fund; and (b) expenses allocated to the Pillar U.S. Treasury Securities Money Market Fund, Pillar U.S. Treasury Securities Plus Money Market Fund, Pillar Prime Obligation Money Market Fund and Pillar Tax-Exempt Money Market Fund, but only to the extent such expenses result in a decrease in per share net asset value of a Fund.

13. The Reorganization is subject to a number of conditions precedent, as set forth in each Plan of Reorganization, including that: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the shareholders of the Acquired Funds will have approved the Plans of Reorganization; (c) each Acquired Fund that is not reorganizing into a Shell Acquiring Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net capital gain to its shareholders; (d) applicants will have received exemptive relief from the Commission with respect to the issues in the application; and (e) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Reorganization. Applicants agree not to make any material changes to a Plan of Reorganization without prior Commission approval.

14. The N–14 registration statement for Galaxy was filed with the Commission on April 2, 2001, and became effective on May 16, 2001. The N–14 registration statement for Galaxy II was filed with the Commission on April 11, 2001, and became effective on May 22, 2001. The prospectus/proxy statement contained in the N–14 registration statements of Galaxy and Galaxy II was mailed to shareholders of the corresponding Acquired Funds on or about May 17, 2001. A special meeting of the Acquired Fund shareholders was held on July 19, 2001 and the Plan of Reorganization was approved.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquiring Funds and the Acquired Funds may be deemed to be affiliated persons and thus the Reorganization may be prohibited by section 17(a) of the Act.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants may not be able to rely on rule 17a–8 in connection with the Reorganization because the Acquiring Funds and the Acquired Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by members of the Fleet Boston Group of more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Funds and certain of the Operating Acquiring Funds, each Acquired Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Fund. In addition, where a Fleet Boston Group member's ownership exceeds 25%, the Acquired Funds and the Operating Acquiring Funds may be deemed to be under common control and thus affiliated persons under section 2(a)(3) of the Act.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Acquired Funds' Board and the Acquiring Funds' Boards, including all of the Disinterested Trustees, found that participation in the Reorganization is in the best interests of each of the Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Funds' assets for shares of the Acquiring Funds will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18607 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44576; File No. SR–Amex–2001–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Goldman Sachs Technology Composite Index

July 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add Rule 1005A relating to the liability disclaimer and warranty with respect to the Goldman Sachs Technology Composite Index and sub-indexes thereof licensed for use in connection with certain Index Fund Shares traded on the Exchange. The following is the text of the proposed rule change (all new language):

Rule 1005A. Goldman Sachs Technology Composite Index

The Goldman Sachs Technology Composite Index and its sub-indexes (the ''Indexes'') are trademarks and trade names of Goldman, Sachs & Co. (''GS'') that are licensed for use in connection with certain exchange traded index funds traded on the Exchange (the ''Products''). The Products are not sponsored, endorsed, sold or promoted by GS, the Exchange or any of their affiliates. GS, the Exchange and their affiliates do not guarantee the accuracy and/or completeness of the Indexes, the Products or any data included therein or the ability of the Indexes or the Products to track the appropriate index performance. GS, the Exchange and their affiliates make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the Indexes, the Products or any data included therein.

Without limiting any of the foregoing, in no event shall GS, the Exchange and their affiliates have any liability for any lost profits or special, punitive, incidental, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages. In addition, GS, the Exchange and their affiliates shall have no liability for any damages, claims, losses or expenses caused by any errors, omissions, interruptions or delays in calculating or disseminating the Indexes or the prices of the Products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently trades shares of iShares Goldman Sachs Technology Index Fund based on the Goldman Sachs Technology Composite Index. The Exchange proposes to add Rule 1005A relating to various disclaimers of liability and warranties in connection with the trading in these Index Fund Shares as well as other Index Fund Shares series that may be based on sub-indexes of the Index. Proposed Rule 1005A would provide, among other things, that Index and its subindexes (''Indexes'') are licensed for use in connection with certain Index Fund Shares traded on the Exchange. Proposed Rule 1005A would provide that the relevant index funds are not sponsored, endorsed, sold or promoted vs Goldman, Sachs & Co. (''GS''), the Exchange or any of their affiliates; and, among other things, would provide certain disclaimers including with respect to guarantees of the accuracy and/or completeness of the Indexes or the ability of the Indexes or the applicable Index Fund Shares to track the appropriate index performance; warranty of results to be obtained; laibility for lost profits or damages; or liability with respect to damages, claims, losses or expenses caused by errors, omissions, interruptions or delays in calculating or disseminating the Indexes or the prices of the applicable Index Fund Shares.

The Exchange believes that proposed Rule 1005A is similar to Rules 1004, 1005 and 1006, which provide various disclaimers for Standard & Poor's, Dow Jones, and Nasdaq Indexes, respectively, in connection with Portfolio Depositary Receipts (*e.g.,* SPDRs®, DIAMONDS®, Nasdaq-100® Index Tracking Stock); and Rule 1004A which provides disclaimers for Index Fund Shares based on the Fortune 500® Index and the Fortune e–50™ Index.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants and Others

Amex has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from June 29, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)6.

such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by August 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18645 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44579; File No. SR–CSE–2001–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Transaction and Book Fees

July 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2001, the Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend the Exchange's schedule of book and transaction fees. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees (No Change to Text)

(k) Tape ''B'' Transactions. The CSE will not impose a transaction fee on Consolidated Tape ''B'' securities. In addition, Members will receive a 50 *percent* [per cent] pro rata transaction credit of *Net* Tape ''B'' revenue.

(l) *Tape ''C'' Transactions. Tape ''C'' Transactions is defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged $0.001 per share per side ($1.00/1000 shares), with a maximum charge of $37.50 per firm per side, for Tape C Transactions.*

(m) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of issues	Fee per issue
0 to 150	[$20.00] *$25.00*
151 to 300	[$10.00] *$15.00*
301 [and higher] *to 500*	[$5.00] *$10.00*
500 and higher	*$1.00*

[(m)] *(n)* NSTS Internal Customer Port Charge. For purposes of this charge, a ''Port'' shall be defined as a TCP/IP address. For each port utilized on the CSE mainframe, a [$200.00] *$350.00* per month charge will be assessed the member.

[(n)] *(o)* Technology Fee. Every member of the Exchange shall be assessed a fee of [$300.00] *$500.00* per month to help offset technology expenses incurred by the Exchange.

[(o)] *(p)* Clearing Related Fee Passed Through To Member. (No change to text).

[(p)] *(q)* SEC Fee (No change to text).

B. Membership Fees. (No Change to Text)[3]

C. Transaction Credit De Minimis. For all rebates applicable to Tape A and Tape B Transactions, no member shall be eligible for a rebate for any quarter unless the total rebate calculation for that quarter exceeds $500.00.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing several amendments to various book and transaction fees in keeping with recent trends in the securities industry. The first proposed amendment would make two clarifications to CSE Rule 11.10(A)(k) (''Tape ''B'' Transactions''). The first clarification proposed by the Exchange changes the term ''percent'' to ''percent,'' and the second clarification would add the word ''Net'' before the term 'Tape ''B'' Revenue.' In addition, the Exchange proposes to add a provision to CSE Rule 11.10(A) as new subsection (1) entitled ''Tape ''C'' Transactions.'' This proposed section establishes a fee schedule for transactions in Nasdaq securities.

The second proposed amendment would be to CSE Rule 11.10(A)(l) (''DD Issue/Book Fees'') in which the monthly book fees would increase by five dollars ($5.00) for certain incremental number of issues traded and decrease the monthly book fee to one dollar ($1.00) for the highest increment. The Exchange also proposes to amend the increments of issues. Book fees are charged to Designated Dealers for each issue in which they are registered as a specialist. This increase is necessary to offset the recent rise in regulatory and

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange inadvertently excluded Section B from the proposed rule text, which reflects no change in the current rule text. Telephone conversation between Jeffrey T. Brown, Vice President, Regulation and General Counsel, CSE, and Lisa Jones, Attorney, Division of Market Regulation, Commission, July 12, 2001.

surveillance costs. This section will also be relabeled as 11.10(A)(m) to accommodate the new subsection (A)(I).

The third proposed amendment would be to CSE Rule 11.10(A)(m) (''NSTS Internal Customer Port Charge'') in which the Exchange proposes to increase the port charge from $200.00 per month to $350.00 per month. This proposed increase is necessary to offset recent increases in Exchange expenditures. This section will also be relabeled as 11.10(A)(n) to accommodate the new subsection (A)(l).

The fourth proposed amendment would be to CSE Rule 11.10(A)(n) (''Technology Fee'') in which every CSE Member would be assessed a fee of five hundred dollars ($500.00) a month, up from three hundred dollars ($300.00) per month. The increase in the Technology Fee is necessary to offset the increase in expenditures the Exchange has incurred and that the Exchange will continue to incur in the CSE's continuing efforts to provide the highest level of technology to its Members and the investing public. This section will also be relabeled as 11.10(A)(o) to accommodate the new subsection (A)(l). Subsections (A)(o) (''Clearing Related Fee Passed Through To Member'') and (A)(p) (SEC Fee) will be relabeled as (A)(p) and (A)(q), respectively, to accommodate the inclusion of proposed CSE Rule 11.10(A)(1) (''Tape ''C'' Transactions''). However, there will be no changes to the rule text.

The final amendment adds a new provision to CSE Rules which is entitled ''Transaction Credit De Minimis'' and will be codified at Rule 11.10(C) (''Transaction Credit De Minimis''). This provision would require members to conduct a minimal amount of transactions per quarter in order to be eligible for a transaction credit for Tape A and Tape B transaction revenue under current CSE rules. This de minimis requirement is necessary to secure the efficiency and cost savings that the CSE transaction credit program encourages.

2. Statutory Basis

The proposed rule change is generally consistent with section 6(b) of the Act.[4] The proposed rule also furthers the objectives of section 6(b)(5) of the Act,[5] particularly, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CSE has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–CSE–2001–03 and should be submitted by August 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18644 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44572; File No. SR–ISE–00–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 by the International Securities Exchange LLC Relating to its Arbitration Program

July 18, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2000, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. On March 5, 2001, the Exchange filed Amendment No. 1 thereto,[3] and on July 16 2001, the Exchange filed Amendment No. 2 thereto,[4] as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Katherine Simmons, Vice President and Associate General counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 5, 2001 (''Amendment No. 1''). In Amendment No. 1, the ISE added paragraphs (a) and (b), which are jurisdictional provisions currently contained in ISE rule 1800, to the proposed rule text.

[4] *See* Letter from Jennifer M. Lamie, Assistant General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2001 (''Amendment No. 2''). Amendment No. 2 replaced the initial filing and Amendment No. 1 in their entirety. In Amendment No. 2, the ISE made minor changes to the order of the subsections under ISE Rule 1800, amended the language of its proposed jurisdictional provisions, and added subsection (c), which governs predispute arbitration agreements.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Chapter 18, Arbitration, of the ISE Rules. Specifically, the ISE proposes to repeal Rules 1800 through 1835 and create new Rule 1800, which will state that the NASD Code of Arbitration, as the same may be in effect from time to time, shall govern Exchange arbitrations. The proposed rule also states that the Exchange shall retain jurisdiction over its members for failure to honor arbitration awards and any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce is in no way limited or precluded by incorporation of the NASD Code of Arbitration. Proposed new language is in italics.

* * * * *

CHAPTER 18

Arbitration

[Rules 1800—1835 repealed entirely]

Rule 1800. Arbitration

(a) General. The 10000 Series of the NASD Manual (''NASD Code of Arbitration''), as the same may be in effect from time to time, shall govern Exchange arbitrations except as may be specified in this Rule 1800. Definitions in the NASD Code of Arbitration shall have the same meaning as that prescribed herein, and procedures contained in the NASD Code of Arbitration shall have the same applications as toward Exchange arbitrations.

(b) Jurisdiction. Any dispute, claim or controversy arising out of or in connection with the business of any member of the Exchange, or arising out of the employment or termination of employment of associated persons(s) with any member may be arbitrated under this Rule 1800 except that (1) a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose; and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the NASD Code of Arbitration, such as class action claims, shall not be eligible for arbitration under this Rule 1800.

(c) Predispute Arbitration Agreements. The requirements of NASD Rule IM–3110(f) shall apply to predispute arbitration agreements between Members and their customers.

(d) Referrals. If any material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Exchange for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 10330 of the NASD Code of Arbitration.

(e) Payment of Awards. Any Member, or person associated with a Member, who fails to honor an award of arbitrators appointed in accordance with the Rules in this Chapter 18 shall be subject to disciplinary proceedings in accordance with Chapter 16 (Discipline).

(f) Other Exchange Actions. The submission of any matter to arbitration under this Chapter shall in no way limit or preclude any right, action or determination by the Exchange which it would otherwise be authorized to adopt, administer or enforce.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has contracted with NASD Regulation to perform arbitrations under ISE's rules. Accordingly, the Exchange proposes to eliminate all of the arbitration rules currently contained in Chapter 18 of the ISE Rules and incorporate the NASD Code of Arbitration by reference.[5] The proposed rule also specifies that potential violations of ISE rules identified during an arbitration hearing may be referred to the ISE for investigation, and that disciplinary action may be brought by the ISE as a result thereof. Finally, a member or person associated with a member will be subject to discipline by the ISE if it fails to honor an award made as a result of an arbitration initiated under ISE Rules.[6]

[5] The ISE represents that, as of this date, no cases have been opened under the Exchange's existing arbitration rules.

[6] NASDR performs arbitrations for the Philadelphia Stock Exchange. *See* Exchange Act Release 40517 (October 1, 1998), 63 FR 54177 (October 8, 2000). Because there have not been any arbitrations initiated under ISE rules, the proposed rule does not contain language found in the Phlx rules to address pending arbitrations.

2. Statutory Basis

The ISE believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b)(5) of the Act,[7] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[7] 15 U.S.C. 78f(b)(5).

proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–17 and should be submitted by August 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18643 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44582; File No. SR–SCCP–2001–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change to Increase the Margin Threshold for Margin Members in Certain Nasdaq National Market Securities

July 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 30, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would implement a margin financing threshold rate of 25 percent for specialist and alternate specialist margin members for certain Nasdaq National Market (''NM'') securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to implement a higher margin financing threshold rate for Nasdaq NM securities for SCCP margin members,. SCCP Rule 9 provides in part that SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP provides margin for such accounts based on SCCP's Rule 9 and other relevant SCCP rules, by-laws, and procedures and Regulation T of the Board of Governors of the Federal Reserve System. Currently, margin members who are designated as specialists or alternate specialists in an exchange listed security are extended margin financing at a threshold rate of 15 percent for positions in those securities held in their specialist accounts. Members holding positions for which they are not designated as specialist or alternate specialist are extended a non-specialist margin rate of 50 percent. Pursuant to Rule 9, SCCP may issue margin calls to any margin member when the margin requirement excess the account equity.

SCCP proposed to amend its procedures to specify a margin financing threshold rate of 25 percent shall be extended to specialists and alternate specialists registered in Nasdaq NM securities. It should be noted that the Philadelphia Stock Exchange, Inc. (''Phlx'') has recently proposed to reinstate its over the counter/unlisted trading privileges (''OTC/UTP'') pilot program for trading activity during regular trading hours.[3] Margin members are expected to be registered in certain of the eligible Nasdaq NM securities once the Phlx receives approval of that proposal and begins trading Nasdaq NM securities again.

As a result, SCCP determined it would be prudent to require a higher margin financing threshold rate of 25 percent for Nasdaq NM securities because the levels of volatility for such securities are still higher than comparable exchange listed securities.[4] It should be noted that no other aspects of the SCCP procedures respecting Rule 9 are being modified; only the margin financing threshold rate for margin members registered as specialists or alternative specialists in certain Nasdaq NM securities is being established at 25 percent.

SCCP believes that the proposed rule change will help to ensure compliance with SCCP's rules regarding margin and Regulation T. Therefore, SCCP believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder. In particular, SCCP believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act[5] because the proposed higher margin financing threshold rate for Nasdaq securities should serve to protect SCCP, its members, investors, and the public interest.

B. Self-Regulatory Organization Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it find such longer period (i) the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release Nos. 43692 (December 8, 2000), 65 FR 78240 (December 14, 2000) (notice of filing Phlx–00–20) and 44533 (July 10, 2001), 66 FR 37083 (July 16, 2001) (amendment to filing Phlx–00–20).

[4] A recent review of volatility levels for the Nasdaq 100 index and Nasdaq Composite index as compared to the Dow Jones Industrial average and the NYSE Composite index indicated significantly higher volatility levels over 10 day, 20 day, 50 day, and 90 day time periods.

[5] 15 U.S.C. 78q–1(b)(3)(F).

so finding or (ii) as to which SCCP consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–2001–06 and should be submitted by August 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18642 Filed 7–25–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3722]

Notice of Proposed Information Collection

AGENCY: Department of State.

ACTION: 30-Day notice of proposed information collection (OMB 1400–0015): Form DS–3052, Nonimmigrant V Visa Application, DS–3052.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Office of Visa Services (CA/VO).

Title of Information Collection: Nonimmigrant V Visa

Application.

Frequency: Once.

Form Number: DS–3052.

Respondents: All nonimmigrant V visa applicants.

Estimated Number of Respondents: 100,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 100,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Eric Cohan, 2401 E St. NW., RM L–703, U.S. Department of State, Washington, DC 20520, (202) 663–1164. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: June 20, 2001.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 01–18663 Filed 7–25–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3727]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the six letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 9, 2001.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

United States Department of State

June 13, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the enclosed certification involves the export to Canada of Portable Adaptive Test Sets and Technical Investigation and Engineering Services in support of the Canadian CF–18 Aircraft Fleet.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of States by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 063–01

The Honorable J. Dennis Hastert, Speaker of

[6] 17 CFR 200.30–3(a)(12).

the House of Representatives.

United States Department of State

June 22, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves technical data and defense services for the Command, Control and Communications Program Regional Operations Control Center (ROCC) for Taiwan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 052–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State

June 28, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of JQ–70 defense hardware to Japan for use in Japanese Defense Agency (JDA) military ships.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 062–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State

June 28, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, test, and on-orbit support of the e-BIRD commercial communication satellite scheduled for launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 071–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State

June 28, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, launch, test, and support on-orbit of the NSS–8 commercial communications satellite for The Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 072–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State

June 28, 2001.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of technical data and defense articles for the Radio 90 Communication system (Ra–90) for end-use by the Swedish Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 073–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 01–18665 Filed 7–25–01; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 3726]

Culturally Significant Objects Imported for Exhibition Determinations: ''Van Gogh and Gauguin: The Studio of the South''

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended by Delegation of Authority No. 236–3 of August 28, 2000 (65 FR 53795), and Delegation of Authority dated June 29, 2001, I hereby determine that the objects to be included in the exhibit, ''Van Gogh and Gauguin: The Studio of the South,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois from on or about September 22, 2001, to on or about January 13, 2002, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department

of State, SA–44, Room 700, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: July 19, 2001.

Brian J. Sexton,

Deputy Assistant Secretary for Professional Exchanges, United States Department of State.

[FR Doc. 01–18664 Filed 7–25–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Changes to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2C, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular (AC) proposal changes; request for comments.

SUMMARY: This notice announces the availability of proposed changes, request for comments, to AC 27–1B, Certification of Normal Category Rotorcraft, and AC 29–2C, Certification of Transport Category Rotorcraft. The proposed changes contain guidance material to bring the AC's up to date with the most recent amendments to 14 Code of Federal Regulations (CFR) parts 27 and 29 and/or current practices. There are 23 paragraph changes proposed for AC 27–1B, and 21 paragraph changes proposed for AC 29–2C.

DATES: Any comments must identify Proposed Changes to AC 27–1B, or Proposed Changes to AC 29–2C, and must be received by September 28, 2001.

ADDRESSES: Any comments can be submitted to FAA, Rotorcraft Standards Staff, ASW–110, Rotorcraft Directorate, Aircraft Certification Service, Forth Worth, Texas 76193–0110, or via electronic mail to Kathy.L.Jones@FAA.GOV.

FOR FURTHER INFORMATION CONTACT: Kathy L. Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certifications Service, Fort Worth, TX 76193–0110; telephone (817) 222–5359; fax (817) 222–5961; email: *Kathy.L.Jones@FAA.GOV.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of proposed changes; request for comments. These proposed changes have been reviewed and commended on by representatives from U.S. industry, European industry, U.S. authorities, and European authorities. Any interested person not receiving these proposed changes may obtain a copy by contacting the person named under the caption **FOR FURTHER INFORMATION CONTACT**. Copies of these proposed changes may be obtained also from the FAA website www.faa.gov/avr/air/asw/rotor.htm.

Interested persons can submit comments on these proposed changes. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, 4th floor, 2601 Meacham Boulevard, Fort Worth, Texas.

Issued in Fort Worth, Texas, on July 20, 2001.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–18675 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to develop recommendations to ensure airplane ventilation systems and cabin environment will provide a suitable environment for crew and passengers following a pressurization system failure resulting in an airplane decompression. This notice is to inform the public of this ARAC activity.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Federal Aviation Administration, Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW. Renton, Washington, (425) 227–2589), *charles.huber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

Part 1: Ventilation—Heating and Humidity (§ 25.831(g))

- Review the current airworthiness standards for transport category airplanes regarding airplane cabin and flight deck environment.
- Determine if revisions are needed to ensure the ventilation system, following system failures, will provide a suitable environment for crew and passengers. The assessment should consider:

1. The types of airplane system failure conditions that should be addressed.

2. Setting the appropriate limiting values of cabin and flight-deck temperature, humidity levels, and exposure times to eliminate any unacceptable impact on flight crews and cabin crew performance, disabling any passengers, or creating long-term health problems to passengers or crews.

3. Any relevant National Aeronautics and Space Administration (NASA), United States (US) Armed Forces, National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Federal Aviation Administration (FAA), academia and industry standards for pressure, temperature and humidity.

- Develop a report based on the review, and recommend any revisions to the rules (including cost estimates) and advisory materials needed to address the above issues.
- If as a result of the recommendations in this report, the FAA publishes a notice of proposed rulemaking and/or notice of availability of proposed advisory circular for public comment, ARAC may be further tasked to review all comments received and provide the FAA with a recommendation for disposition of those comments.

Schedule: This report is to be submitted no later than 24 months after the task is published by the FAA in the **Federal Register**.

Part 2: Cabin Pressurization (§ 25.841(a))

- Review and current airworthiness standards for transport category airplanes regarding airplane cabin altitudes resulting from cabin decompression.
- Determine if revisions are needed to ensure that during certain failure conditions the cabin environment is suitable for crew and passengers. The assessment should consider:

1. The types of airplane system, structure, and/or propulsion failure conditions that should be addressed.

2. The factors that impact the level of severity of the threat, airplane design features, and operation procedures that could be used to moderate the severity of the threat.

3. The recommendation of appropriation cabin pressure standards that would govern cabin air quality following certain failure conditions. These standard should ensure that exposure time to a reduced pressure and the lack of oxygen in the airplane does not reach a level that would:

a. Negatively impact the flight-deck crew's performance to the extent that the flight crew could not safely control the airplane during an emergency descent,

b. Disable any cabin crew member or passenger to the degree that resuscitation techniques would be needed to revive, or

c. Create long term health problems for the crew or passengers.

4. A definition of terms (e.g., ''appreciable rise in the pressure differential'', ''reasonably precludes'', ''rapidly equalized'', ''any delay that would significantly increase the hazards'', etc.) and appropriate pressurization system requirements and practices during all phases of operation.

5. Any relevant NASA, US Armed Forces, NIOSH, OSHA, FAA, academia and industry standards.

• Develop a report based on the review, and recommend any revisions to the rules (including cost estimates) and advisory materials needed to address the above issues.

• If as a result of the recommendations the FAA publishes a notice of proposed rulemaking and/or notice of availability of proposed advisory circular, ARAC may be further tasked to review all comments received and provide the FAA with a recommendation for disposition of those comments.

Schedule: This report is to be submitted no later than 24 months after the task is published by the FAA in the **Federal Register**.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the Mechanical Systems Harmonization Working Group, Transport Airplane and Engine Issues. The working group serves as staff to ARAC and assists in the analysis of assigned task. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The Mechanical Systems Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in items 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Mechanical Systems Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than August 24, 2001. The requests will be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requests to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Mechanical Systems Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on July 23, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–18674 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Finding Document

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Environmental finding document: finding no significant impact; notice.

SUMMARY: Pursuant to Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, the application of which is guided by the National Environmental Policy Act (NEPA) of 1969, the Federal Aviation Administration (FAA) prepared an Environmental Assessment (EA), evaluating a Sea Launch Limited Partnership (SLLP) proposal to evaluate the potential environmental effects of issuing a launch operator license (LOL) or launch-specific licenses to SLLP. THe LOL would allow SLLP to conduct up to eight commercial launches per year for five years without obtaining a separate license for each launch as long as there is not change in the launch parameters or in the anticipated environmental impacts. These launches would be equatorial and would use azimuths between 82.6° and 97.4°, inclusive, originating from the SLLP Launch Platform (LP) at 0° latitude and 154° West (W) longitude, which is 425 kilometers (km) (266 miles (mi)) from Kiritimati (Christmas Island) in the

Kiribati Island Group in the Pacific Ocean. The EA also evaluated the proposed issuance of a launch-specific license for the launch of a Galaxy IIIC payload as well as other launch-specific licenses for launches within the proposed azimuth range and other specified launch parameters should the LOL not be issued or be delayed.

After reviewing the EA which analyzed currently available data and information on existing conditions, potential project impacts, and measures to mitigate those impacts, the FAA Associate Administrator for Commercial Space Transportation (AST) finds that licensing the proposed launch activities including the LOL, Launch-specific license for the Galaxy IIIC and other launch-specific licenses within the proposed azimuth range, is not a major Federal action that would significantly affect the quality of the human environment outside the United States within the meaning of E.O. 12114. Therefore, the FAA has determined that the preparation of an Environmental Impact Statement (EIS) is not required, and AST is issuing an Environmental Finding Document Finding No Significant Impact.

The Environmental Assessment for a Launch Operator License (LOL) for Sea Launch Limited Partnership, dated May 15, 2001, incorporates by reference a prior EA prepared by the FAA dated and referred to as the February 11, 1999 EA. Both documents are incorporated by reference. THe LOL EA describes the purpose and need for the proposed project and describes the alternatives considered during the preparation of the document. The LOL EA also describes the environmental setting and analyzes the potential impacts to the applicable human environment as a consequence of the proposed project.

Any person desiring a copy of the ''Final Environmental Assessment for a Launch Operator License for Sea Launch Limited Partnership'' should contact: Ms. Michon Washington, Federal Aviation Administration, Office of the Associate Administrator for Commercial Space Transportation, Suite 331/AST–100, 800 Independence Ave., SW., Washington, DC 20591; phone (202) 267–9305, or refer to the following Internet address: *http://ast.faa.gov.*

Action

The proposed Federal action has three parts. First, the proposed Federal action is for the FAA to issue an LOL to SLLP authorizing SLLP to conduct launches from one launch site, within a range of launch parameters, of specific launch vehicles, transporting specified classes of payload. (See 14 CFR 415.3(b)). The proposed LOL would authorize SLLP to:

- Conduct up to eight launches per year over a five-year period, for a maximum of 40 launches;
- Use a launch site at 0° latitude and 154° W longitude;
- Launch along a range of azimuths from 82.6° to 97.4°, inclusi ve;
- Use a Zenit-3SL launch vehicle; and
- Transport specified classes of payloads.

Any change to these LOL parameters would require additional environmental and safety analyses.

Second, the proposed Federal action is for the FAA to issue a launch-specific license to SLLP for the launch of Galaxy IIIC. Third, the proposed Federal action includes issuance of other potential launch-specific licenses (not to exceed eight per year) as necessary should the proposed LOL not be issued or be delayed. The proposed Galaxy IIIC launch specific licenses, as well as the other launch-specific licenses would authorize the SLLP to conduct specific launches:

- From a launch site at 0° latitude and 154°W longitude;
- On a launch azimuth within a range from 82.6° to 97.4°, inclusive;
- Using a Zenit-3SL launch vehicle; and
- Transporting specified classes of payloads.

The launch site location, launch vehicles, and classes of payloads that would be authorized under the proposed launch-specific licenses would be identical to the launch site location, launch vehicles, and classes of payloads that would be authorized under the proposed LOL. In addition, the launch azimuths that would be authorized under the launch-specific licenses would fall within the launch azimuth range that would be authorized under the LOL. Finally, the number of launch-specific licenses that would be issued per year would not exceed the number of the launches that would be authorized annually under the LOL (i.e., eight per year). The conduct that would be authorized under the proposed LOL and launch-specific licenses is identical, only the license application process would differ. Therefore, discussions and analyses of potential environmental impacts of the LOL and the launch-specific licenses are addressed together. Throughout the document, when the proposed action is discussed, while emphasis is placed on the launch operator license, it should be understood that the launch-specific licenses are included in the proposed action.

To obtain a launch license (either launch-specific or a launch operator license), an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in 14 CFR 415 Subpart B (Policy Review and Approval), Subpart C (Safety Review and Approval for Launch From a Federal Launch Range, including the calculation of acceptable flight risk), and Subpart F (Safety Review and Approval for Launch From a Launch Site not Operated by a Federal Launch Range). Other requirements include payload determination (14 CFR 415 Subpart D), financial responsibility (14 CFR 415.83, Subpart E) and environmental review (14 CFR 415 Subpart G).

The purpose of the proposed action as defined in 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121 is to:

- Promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;
- Encourage the U.S. private sector to provide launch vehicles, reentry vehicles, and associated services by simplifying and expediting the issuance of licenses;
- Provide FAA oversight and coordination of licensed launches and to protect the public health and safety, safety of property, and national security and foreign policy interests of the U.S.; and
- Facilitate the strengthening and expansion of the U.S. space transportation infrastructure.

The need for the proposed action is to streamline the FAA's licensing process while still assuring public safety and proper environmental review. Such a streamlined process will promote the entrepreneurial activity of a licensed launch provider. The proposed LOL would cover multiple launches using the same infrastructure at the same launch location through a range of launch azimuths without the need to re-evaluate license applications for individual launches unless there are changes in the proposed action, environmental impacts or conditions of approval. The proposed LOL would allow SLLP to conduct up to eight launches per year for five years, for a maximum of 40 launches. The proposed LOL would allow SLLP to launch on exact equatorial azimuths (e.g., 90°), which are optimal for geosynchronous orbit (GSO) launches in terms of fuel efficiency, payload weight, and satellite life span.

Alternatives Including No Action and the Alternatives Evaluation Process

The FAA considered six alternatives in addition to the proposed action. These alternatives included issuing the proposed LOL with various changes in the launch parameters:

- *Alternative with Up to 12 Launches Per Year.* This alternative evaluates increasing the annual number of launches up to a maximum of 12 per year;
- *Alternative with a Range of Azimuths Between 70° and 110°.* This alternative considers a wider range of azimuths, those from 70° to 110°, inclusive, identified as feasible for GSO launches;
- *Alternative with Avoidance of National Parks and National Reserves.* This alternative would involve launching along a range of azimuths between 82.6° and 97.4° but would avoid specific azimuths within this range that would overfly any country's National Park or National Reserve;
- *Alternative with Avoidance of the Oceanic Islands.* This alternative would involve launching along a range of azimuths between 82.6° and 97.4° but would avoid any azimuth that would overfly any of the Oceanic Islands; and
- *Alternative with Avoidance of the Galapagos Islands.* This alternative would involve launching along a range of azimuths between 82.6° and 97.4° but would avoid any azimuths that overfly the Galapagos Islands Group; and
- No Action Alternative.

The council on Environmental Quality (CEQ) regulations require that the agency look at ''reasonable'' alternatives to a proposed action. With that standard in mind, the FAA did not evaluate in detail those alternatives that showed no possibility of meeting the purpose and need of the proposed action, as described previously. The following screening criteria were used to determine whether alternatives were reasonable to evaluate in detail in the EA:

- Promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;
- Encourage U.S. private sector to provide launch vehicles, reentry vehicles, and associated services by simplifying and expediting the issuance of licenses;
- Provide FAA oversight and coordination of licensed launches and to protect the public health and safety, safety of property, and national security and foreign policy interests of the US; and
- Facilitate the strengthening and expansion of the U.S. space transportation infrastructure.

Based on the evaluation of alternatives using the above screening criteria and the requirements of the National Environmental Policy Act (NEPA), the following alternatives were evaluated in detail in the EA:

- Proposed Action,
- Alternative with Avoidance of the Oceanic Islands,
- Alternative with Avoidance of the Galapagos Islands, and
- No Action Alternative.

Environmental Impacts of Successful Flight

Geology, Oceanography, and Atmospheric Processes

The launch will originate from a launch site at 0° latitude and 154°W longitude. As the flight proceeds over open ocean, State I and the fairing will be deposited. The Stage I and fairing impact zones overlap slightly, and jointly form a rectangle of approximately 480 km (north to south) by 600 km (east to west) (300 by 375 mi). These impact zones are located in water 2,000 to 4,000 meters (m) (1.2 to 2.5 mi) deep. Later in the flight, Stage II will also be deposited in the open ocean. The Stage II impact zone is approximately 1,270 km (790 mi) by 1,320 km (820 miles). The water depth in this area is approximately 3,900 m (2.4 mi). The deposition of spent stages and the fairing in these areas would be inconsequential relative to natural geologic processes in the region.

The open ocean environment within the proposed range of azimuths is largely uniform in terms of oceanic and atmospheric processes, with biological characteristics (e.g., plankton biomass) primarily varying with nutrient and mineral levels (Barber, et al., 1996). The spend stages and fairing pieces from any launch within the proposed range of azimuths would fall into undifferentiated deep, open waters of the tropical equatorial Pacific Ocean, far away from any Oceanic Islands or continental landmass.

Given the expanse of the open ocean area within each impact zone, the environmental effect of stage and fairing deposition is minimal. For any individual launch, only 0.00003 percent, 0.000003 percent, and 0.000001 percent of the impact zone area would be affected by the Stage I, fairing, and Stage II depositions, respectively.

Residual propellants would be released as spent integrated launch vehicle (ILV) components fall into the ocean. Residual LOX would dissipate immediately upon release. Residual kerosene would be dispersed into a mist during descent, and all but the largest droplets would evaporate within a few minutes. The environment would recover from the effects of the residual propellants and return to its natural condition within a few days.

Biological Communities and Commercial Activities

Potential effects of successful launches on biological communities and commercial activities are limited to the unlikely possibility that the spent stages and fairings could fall on a marine organism, ship, fishing vessel, or aircraft and noise effects associated with the launch.

There is a remote possibility that spent stages or the fairing may fall on a marine organism, ship or fishing vessel, or aircraft. As a mitigation measure, SLLP gives advance notice for each launch to the FAA (Central Altitude Reservation Function), the U.S. Coast Guard (USCG; 14th District), the National Imagery and Mapping Agency (NIMA), and the U.S. Space Command (USSC). To coordinate air, marine, and space traffic, these organizations issue necessary information, including notices, through well-established channels. For vessels without receiving equipment (expected to be limited to those operating out of Kiribati ports), standard notices are delivered by fax to Kiribati government authorities and regional fishing fleet and tour operators for distribution and posting.

Noise

Steady noise from pre- and post-launch operations (*e.g.,* from ship engines) may reach approximately 70 dB. Research indicates that this level of noise would not have a detrimental affect on any animal that would linger in the area (Shulhof, 1994; Richardson, et al., 1997). Wind speeds of approximately 60 km/hr (37 mi/hr), which occur in the eastern portion of the Pacific Ocean, generate similar levels of noise (*i.e.,* approximately 70 dB) on the open ocean (NIMA, 1998; Cato, 1994).

No significant noise impacts would be expected from the launch because of the relatively short duration of launch noise and the unlikely presence of the higher trophic level organisms near the launch site. Noise from a single launch is estimated to be 150 dB at 378 m (1240 ft), with the equivalent sound intensity in the water at this distance being 75 dB. This reflects the fact that noise generated above the ocean is significantly attenuated by the air-water interface, which protects fish and

marine mammals from most above-water noise impacts (Bowles, 1995).

Data suggest that fish and marine mammals will move to avoid chronic high level noise and noise that may increase slowly in magnitude (Office of Naval Research, 2000; ENS, 2000). Fish and marine mammals, however, are not likely to be able to move quickly enough to avoid sudden acute high level noise. The velocity of sound in seawater is approximately 1,500 m/s (4,950 ft/s), or about 4.5 times faster than in air (Taley, 1990).

A sonic boom would occur when the ILV reaches supersonic velocity during Stage I flight. A sonic boom is caused when an object moving faster than sound (i.e., 1,200 km/hr (750 mi/hr) at sea level) compresses the air in its path. The sound heard at the Earth's surface as a ''sonic boom'' is the sudden onset and release of pressure after the buildup by the shock wave or ''peak overpressure.'' The change in pressure caused by a sonic boom is only a few kilograms per square meter (pounds per square foot).

The maximum pressures experienced from a sonic boom would be directly under the launch vehicle flight path, and is primarily a function of velocity and altitude. The sonic boom would occur over the open ocean far from any of the Oceanic Islands. The distance between the sonic boom footprint and the closest landmass (i.e., Kiritimati Island) is 420 km (260 mi). Below water effects of the sonic boom would be rapidly attenuated by the air-water interface (Bowles, 1995). Thus, it would not have any significant adverse effects on marine organisms that happen to be in the area other than a startle reaction. A startle reaction may cause an adverse effect in a threatened and endangered species; however, little information on the physiological impacts of the startle effect is available for marine organisms in the open ocean. No physical harm to animals or ships at sea level would occur because of the altitude of the launch vehicle and its vertical acceleration (USAF, 1996).

Environmental Impacts of Failed Missions

The EP considered and analyzed potential impacts of a possible mission failure at the LP, during Stage I or Stage II flight, or during Upper Stage flight. In most cases, a failure would result from a detected deviation between the programmed flight path parameter (e.g., pitch, yaw, roll) and the actual flight parameters as monitored by ILV sensors. If flight deviations exceed established limits, the thrust termination system would terminate the flight. Failure of the onboard computer systems could also result in thrust termination and loss of the mission. SLLP has projected launch reliabilities of 0.982 for Stage I flight, 0.956 for Stage II flight, and 0.974 for Upper Stage flight (SLLP, 2001). For the purposes of conducting debris risk analyses the FAA specifies that for launch vehicles ''with fewer than 15 flights, a launch operator shall use an overall launch vehicle failure probability of 0.31.'' 14 CFR 417.227(b)(6)(i) For launch vehicles ''with at least 15 flights, but fewer than 30 flights, a launch operator shall use an overall launch vehicle failure probability of 0.10 or the empirical failure probability, whichever is greater.'' 14 CFR 417.227(b)(6)(ii) For launch vehicles ''with 30 or more flights, a launch operator shall use the empirical failure probability determined from the actual flight history.'' 14 CFR 417.227(b)(6)(iii)

Possible Failure at the Launch Platform

A possible failure at the LP would likely result in a cascading explosion of all ILV propellants. The explosions would scatter pieces of the ILV, and perhaps pieces of the LP, as far as three kilometers (two miles) away (the LP is designed to survive an explosion of the fully fueled launch vehicle). A smoke plume would rise and drift downwind some distance before dissipating. In the course of about one minute, the entire matter and energy of the ILV would be dispersed in the environment in a relatively concentrated area of the ocean. Environmental effects would include intense heat generated at the ocean surface; debris and noise released during the explosion; emissions released to the atmosphere; and the subsequent cleanup needed on the LP. Despite this intense, short-term, and localized disruption, there would be no discernible long-term impact to the environment. The fuels not consumed in the explosion would evaporate or become entrained in the water column and would eventually be degraded by microbial activity and oxidation (Doerffer, 1992; National Research Council, 1985; Rubin, 1989; ITOPH, 2001; and EPA, 1999). The areas of plankton lost due to heat or toxic effect would be re-colonized as currents redistribute the surface waters (Grigg and Hey, 1992).

Launch Abort Scenarios

There is also the potential for a launch abort at the LP (i.e., when a countdown is interrupted or no launch occurs, which is technically not a failure). In general, a launch would be aborted if equipment malfunctions or unresolved deviations of ILV parameters occur just before launch. Due to the inherent complexity of the ILV, a deviation in any number of factors could trigger an abort, and the extent to which propellants need to be safeguarded would vary based on the time prior to launch that the abort occurs. In all cases, however, the resulting contingency measures initiated by SLLP would follow established routines to stabilize the ILV on the LP. A worst-case abort, which would occur three seconds prior to launch, involves the largest quantities of propellant and the most detailed contingency measures. An abort scenario would involve draining small quantities of propellant into the flame bucket where it would evaporate due to wind effects. In addition, the pyrophoric fluid that initiates kerosene ignition would be burned according to SLLP's operating procedures. The ILV would be returned to a horizontal position in the LP hanger, and the propellant reservoirs from the State I engine would be drained into containers for later disposal at the Home Port as a hazardous waste.

An ILV failure moments after the ILV leaves the deck of the LP could also be considered a worst-case scenario since the propellant quantities involved would still be near a maximum at the onset of flight, and the failure would occur over the ocean rather than on the LP. A possible failure at this stage of flight would put all unexpended propellants, other hazardous materials, and ILV hardware into the environment in a more concentrated area than would occur during a successful flight. The quantity of hazardous material and debris reaching the ocean surface would depend on when in the flight the failure occurred (i.e., the longer the flight before failure, the less propellant would be onboard the ILV and available to potentially reach the ocean surface).

Explosive Versus Thrust Termination Failures

Potential explosive failures (marked by the sudden destruction of propellants and the ILV during flight) would result in the scattering of ILV parts and the immediate consumption by burning of most if not all of the hazardous materials incorporated by or contained in those parts. In contrast, possible thrust termination failures (i.e., one in which a deviation in flight triggers engine cutoff) would result in the ILV losing upward and forward momentum and falling toward Earth. In this case, an ILV early in Stage I flight would likely fall intact and rupture on the ocean surface, while later in Stage I flight and

during all of Stage II flight, the ILV would begin to tumble within seconds and break up due to stresses on the structure. Explosions may also occur during thrust termination if, as the ILV breaks up, flammable materials become exposed to hot engine parts and ignite. If an explosion does not occur, the extent to which ILV materials would reach the Earth's surface would depend on the altitude and speed of the ILV at the time of thrust termination.

Possible Failure Near the Launch Platform

The worst-case scenario during initial ILV flight would be a thrust termination failure within 20 seconds of the ILV leaving the LP and the ILV falling intact and rupturing on the ocean surface. Regardless of when within the first 20 seconds the failure occurs, the ILV flight would continue until the twentieth second at which time the thrust termination system would automatically end the flight. This delayed termination has been automated to ensure that this type of failure does not damage the LP and to ensure that the ILV falls safely away from the ACS, which is positioned approximately five km (three mi) from the LP. At this point in flight, most of the propellant is unburned and virtually all of the ILV mass of propellants, other hazardous material, and components would be released into the environment in a concentrated area.

A possible failure near the launch platform would be worse than either an explosive failure or a thrust termination failure in which the ILV explodes later in the flight. In the case of a failure involving an explosion, most of the ILV would be consumed, destroyed, and scattered in a series of cascading explosions, and the propellants and other flammable materials would be burned before reaching the ocean surface. A thrust termination or explosive failure later in the launch may have less environmental impact (depending on the impact location). During such a failure later in flight more of the debris and virtually all of the propellants would be incinerated or evaporated and not reach the ocean surface, while those debris or propellants that would reach the ocean surface would be more dispersed. In general, larger and more concentrated amounts of ILV material and debris released during a failure would have a proportionately greater impact and take more time to dissipate and break down in the environment.

Effects of a Possible Failure During Stage I or II Flight

For the proposed action, the scenario of possible Stage I or II failure, and especially the worst-case scenario of possible thrust termination failure during the first 20 seconds of flight, would occur over the east-central Pacific Ocean, well away from the Oceanic Islands and South America. Even if a failure caused a deviation from the intended flight plan, the deviation prior to thrust termination would not be so great as to have any environmental effects significantly closer to the Oceanic Islands than the normal debris deposition areas of a successful flight. Therefore, the debris from the ILV would fall into the deep waters of the open ocean far from any Oceanic Islands. The debris, which includes metal and composite components that incorporate small amounts of rubber, plastics, and ceramics, is largely inert and would settle to the ocean bottom and become an inert part of the seafloor ecology (Chou, 1991).

A possible failure during Stage I or II flight would result in the release of propellants and other hazardous materials. In addition to the main propellants, kerosene (or Boktan) and LOX, small quantities of the propellants MMH (or UDMH) and N_2O_4 would be released, as would even smaller amounts of explosive compounds and metals present in release mechanisms and batteries.

There are three primary effects of a failure during Stage I or II flight:

- Release of emissions to the atmosphere;
- Release of propellants and other hazardous material to the ocean; and
- Unlikely possibility of Stage I or II debris falling on marine organisms, marine vessels, or aircraft.

Possible failure during flight of the Upper Stage could conceivably occur at any point as the Upper Stage progressively transits over the open ocean, the Oceanic Islands, and the northern part of South America. Given the speed and altitude of the Upper Stage during this period, a failure during any point in Upper Stage flight would result in most of the material components and all of the propellants being heated in the atmosphere and vaporized or burned from frictional effects before reaching the Earth's surface. The actual amount of debris that survives depends on the time of failure during the flight (i.e., more debris would survive a failure that occurs earlier during the flight).

As is the case for possible Stage I and II failures discussed above, a possible Upper Stage failure could occur as an explosion (where propellants in the Upper Stage suddenly combust) or a thrust termination (where acceleration ceases and the remaining ILV components begin to fall). In both types of failure scenarios, the hazardous materials associated with the Upper Stage, the satellite payload, and their connecting components would be rapidly consumed (in an explosion) or released and dispersed (as the ILV components tumble and break up in the fall to Earth).

Cumulative Impacts

In general, all of the potential environmental impacts of the proposed action would occur on a regional scale. No larger global impacts are expected to occur, mainly because of the small amounts of debris, hazardous material, and atmospheric emissions produced by the ILV relative to other anthropogenic activities (e.g., power generation and the scale of natural processes in the Pacific Ocean).

Other Environmental Concerns

Environmental Justice and Social and Economic Considerations

Although Executive Order 12114 requires consideration of Federal actions abroad with the potential for impacts to the environment, the Executive Order specifically defines environment as ''the natural and physical environment and excludes social, economic and other environments * * *.'' Therefore, potential impacts to environments other than the natural and physical are not analyzed in this document. Nevertheless, given the limited amount of time that the LP and the ACS will be present at the launch location, social and economic considerations are assumed to be negligible.

Exclusive Economic Zones

Under successful flight conditions, any potential environmental impact from the stages and fairing would occur outside the Exclusive Economic Zones—defined as 200 nautical miles (370 km or 230 statute miles) of all countries bordering the affected environment. Only in the event of a mission failure during Upper Stage flight would be deposition of debris potentially occur within an EEZ. As with all missions failures, an intensive investigation as to the cause of the failure would be completed. A return to flight for the SLLP project would be re-instated only after corrective actions are undertaken to the satisfaction of the FAA and SLLP.

Other Alternatives to the Proposed Action

Avoidance of the Oceanic Islands

Under this alternative, only azimuths between 82.6° to 83.28°, 84.50° to 85.07°, 86.36° to 88.80° and 92.89° to 97.40° would be used. The environmental impacts would be the same as for the proposed action except for the impacts to Oceanic Islands and the corresponding portions of South America which would not be overflown in this alternative action.

Upper Stage and payload flight would progressively transit over open ocean waters and the northern part of South America. Upper Stage flight during a successful mission would have no effect on the ocean or land environments or the lower atmosphere because its operation occurs at very high altitudes. The impacts of failure during Upper Stage flight for this alternative would be the same as those for the proposed action with the exception that no Stage I or II impact would occur on or near the Oceanic Islands.

Avoidance of the Galapagos Islands

Under this alternative, only azimuths between 83.60° to 86.8 0° and 92.89° to 97.40° would be used. The environmental impacts would be the same as for the proposed action except for the impacts to the Galapagos Islands and the corresponding portions of South America which would not be overflown in this alternative action.

Upper Stage and payload flight would progressively transit over open ocean waters, the Oceanic Islands (excluding the Galapagos Islands), and the northern part of South America. Upper Stage flight during a successful mission would have no effect on the ocean or land environments of the lower atmosphere because its operation occurs at very high altitudes. The impacts of failure during Upper Stage flight for this alternative would be the same as those for the proposed action with the exception that no impact would occur on or near the Galapagos Islands.

No Action

Under the No Action alternative FAA would not issue an LOL or launch-specific license for Galaxy IIIC to SLLP. SLLP would continue to prepare and submit launch-specific applications for individual licenses to launch up to six satellites per year within the launch parameters addressed in the February 11, 1999 EA. Home Port operations would continue at their present level. If a customer requires a different launch azimuth, SLLP would prepare individual environmental analyses and documentation to support launch-specific applications and submit the documentation to the FAA for review.

Environmental Monitoring and Protection Plan

The Environmental Monitoring and Protection Plan is an evolving document of mitigation measures, incorporating improvements identified by the FAA, SLLP, or suggested by the public. The plan consists of four elements:

- Visual observation for species of concern.
- Remote detection of atmospheric effects during launch.
- Collection of surface water samples to detect possible launch effects.
- Notification to mariners and air traffic.

Public Participation

During the planning phase of the Sea Launch environmental review process, the FAA concluded that public participation was required. It was further decided that the Environmental Assessment document would be made available for public review for a 30-day period. Consequently a list of pertinent entities was compiled to ensure that wide distribution of the documents would be possible. The list included cognizant Federal and State agencies, scientific institutes, trade and environmental organizations and foreign embassies of countries in the area of the proposed action. The documents were also made available to any organization or member of the public who requested a copy and could also be found in the FAA/AST web site. The public review period commenced on May 17, 2001 via publication of a Notice in the **Federal Register**. Preceding this announcement, FAA mailed copies of the documents to all entities on the list. Additional copies were mailed via regular or next-day mail, as requested. The public review and comment period was scheduled from May 17, 2001 until June 18, 2001.

During the public review period the U.S. Air Force and the Aerospace Corporation expressed interest in the project and submitted formal comments to the FAA. The South Pacific Regional Environmental Programme (SPREP) indicated the need for additional time for internal coordination and consultation. The FAA extended the closing date for comments for SPREP until June 30, 2001. However, no comments were received from SPREP.

As part of the public participation program, FAA/AST personnel held face-to-face information exchanges with representatives of Ecuador in Washington, DC. In addition, SLLP personnel traveled to the Western Pacific and held similar meetings with representatives from SPREP.

The Final Sea Launch LOL Environmental Assessment and Environmental Finding Document are public information available upon request pursuant to FAA procedures. Copies of the final Sea Launch LOL Environmental Assessment and finding document will be sent to persons on the list of pertinent entities.

Notification of the Environmental Finding Document is provided to all interested parties through publication of this Notice in the **Federal Register.**

Prepared by:

Michon Washington.

Dated: July 19, 2001.

Recommended by:

Herbert Bachner.

Dated: July 19, 2001.

Finding

After careful and thorough consideration of the SLLP LOL Final EA and the facts contained herein, the undersigned finds that the proposed Federal action is consistent with the purpose of national environmental policies and objectives as set forth in Executive Order 12114 the application of which is guided by the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment outside the United States within the meaning of Executive Order (E.O.) 12114, or otherwise include any condition requiring consultation. Therefore, the FAA has determined that an Environmental Impact Statement for the proposed action is not required (See E.O. 12114, Section 2–5).

Issued in Washington, DC, on: July 19, 2001.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 01–18673 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and

the petitioner's arguments in favor of relief.

Austin and Texas Central Railroad

[Docket Number FRA–2000–7366]

Austin and Texas Central Railroad of Cedar Park, Texas seeks a permanent waiver of compliance from the requirements of 49 CFR Part 223 (Safety Glazing Standards) for two diesel-electric locomotives, ACTX 442 and ACTX 443. The subjects of this petition are Model RSD–15 locomotives built by American Locomotive Company (Alco) in 1960.

These locomotives are used on 151.4 miles of Capitol Metropolitan Transit Authority-owned class 1 and 2 track. Operation on this line includes excursion and freight service. There are two crossings of other railroads and 296 highway/rail grade crossings. Primary use is between milepost 54.5 at Austin, Texas, and milepost 115.0 at Burnet, Texas. The railroad proposes to make any glazing repairs that may become necessary with certified glazing, if it is mechanically possible without alterations to the structure or function of the locomotives.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (e.g., Docket Number FRA–2000–7366) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on July 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–18659 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. NHTSA–2001–9628 and NHTSA–2001–9630]

Re-opening of Comment Period on Whether Nonconforming 2001 Ferrari 360 and 550 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Re-opening of comment periods.

SUMMARY: On May 21, 2001, we published notices of receipt of petitions nos. 484 and 485 for decisions that nonconforming 2001 Ferrari 360 and 550 passenger cars are eligible for importation into the United States. These notices are contained in notice documents 01–12728 and 01–12732, which were published in the **Federal Register** on May 21, 2001, at 66 FR 28020 and 66 FR 28025, respectively.

The purpose of this Notice is to notify the public that NHTSA is providing additional time within which any comment may be submitted in relation to these import eligibility petitions. This re-opening of the comment periods is based on requests that NHTSA received from Fiat Auto R&D U.S.A., a division of Alfa Romeo Inc., and Ferrari North America Inc., on June 27, 2001, and June 29, 2001, respectively, which was after the comment periods' original closing date of June 20, 2001. The comment periods for 2 petition nos. 484 and 485 for import eligibility regarding nonconforming 2001 Ferrari 360 and 550 passenger cars are now re-opened until August 10, 2001.

DATES: Comments must be submitted on or before August 10, 2001.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 23, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 01–18658 Filed 7–25–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–318 (Sub–No. 5X)]

Louisiana & Delta Railroad, Inc.—Abandonment Exemption—in Iberia Parish, LA

Louisiana & Delta Railroad, Inc. (Applicant) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.08-mile portion of the Salt Mine Branch line of railroad between milepost 6.72 and milepost 9.8 in Iberia Parish, LA.[1] The line traverses United States Postal Service Zip Code 70513.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in the last 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

[1] The Atchafalaya Basin Program, Department of Natural Resources (DNR) filed a request for issuance of a notice of interim trail use for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the DNR's trail use request, and any others that may be filed, in a subsequent decision.

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 6, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 15, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 31, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Applicant shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by Applicant's filing of a notice of consummation by July 26, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 18, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18571 Filed 7–25–01; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 180X)]

Union Pacific Railroad Company—Abandonment Exemption—in Shawnee County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 1.07-mile line of railroad over the Topeka Industrial Lead from milepost 406.53 to milepost 407.60 in Topeka, Shawnee County, KS. The line traverses United States Postal Service Zip Codes 66607 and 66612.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 6, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 15, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 31, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by July 26, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Decided: July 12, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–18117 Filed 7–25–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 27, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0070.

Form Number: IRS Form 2350.

Type of Review: Revision.

Title: Application for Extension of Time to File U.S. Income Tax Return.

Description: Form 2350 is used to request an extension of time to file in order to meet the bona fide residence or physical presence tests required to gain the benefits permitted under section 911. The information furnished is used to determine if the extension should be granted.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeeper: 22,594.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—9 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—14 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 22,594 hours.

OMB Number: 1545–0985.

Regulation Project Number: PS–128–86, PS–127–86, and PS–73–88 Final.

Type of Review: Extension.

Title: Generation-Skipping Transfer Tax.

Description: This regulation provides rules relating to the effective date, return requirements, definitions, and certain special rules covering the generation-skipping transfer tax. The information required by the regulation will require individuals and/or fiduciaries to report information on Forms 706NA, 706, 706GS(D), 706GS(D–1), 706GS(T), 709 and 843 in connection with the generation skipping transfer tax. The information will facilitate the assessment of the tax and taxpayer examinations.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 7,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: On occasion, Other (Form 706 is filed within 9 months after the taxpayer dies.).

Estimated Total Reporting/Recordkeeping Burden: 3,750 hours.

OMB Number: 1545–1058.

Form Number: IRS Form 8655.

Type of Review: Extension.

Title: Reporting Agent Authorization for Magnetic Tape/Electronic Filers.

Description: Form 8655 allows a taxpayer to designate a report agent to file certain employment ax returns electronically or on magnetic tape, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents. Reporting agents are persons or organizations preparing and filing magnetic tape or electronic equivalents of federal tax returns and/or submitting federal tax deposits.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 110,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 11,000 hours.

OMB Number: 1545–1430.

Form Number: IRS Forms 945, 945–A, and 945–V.

Type of Review: Revision.

Title: Annual Return of Withheld Federal Income Tax (945); Annual Record of Federal Tax Liability (945–A); and Form 945 Payment Voucher (945–V).

Description: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement and gambling winnings. Form 945–A is used to report nonpayroll tax liabilities. Form 945–V is used by those taxpayers who submit a payment with their return.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 193,468.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
945	6 hr., 12 min	35 min	43 min.
945–A	9 hr., 34 min.	15 min	15 min.
945–V	14 min.		

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,001,199 hours.

OMB Number: 1545–1601.

Revenue Procedure Number: Revenue Procedure 98–32.

Type of Review: Revision.

Title: EFTPS Programs for Reporting Agents.

Description: The Batch and Bulk Filer programs are used by Filers for electronically submitting enrollments, federal tax deposits, and federal tax payments on behalf of multiple taxpayers. These programs are part of the Electronic Federal Tax Payment System (EFTPS).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 82 hours, 23 minutes.

Frequency of Response: On occasion, Weekly, Monthly, Quarterly, Semi-annually, Annually, Biennially.

Estimated Total Reporting/Recordkeeping Burden: 123,567 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–18606 Filed 7–25–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–52]

Cancellation of Customs Broker Licenses

AGENCY: Customs Service; Department of the Treasury.

ACTION: Customs broker license cancellations.

SUMMARY: In a document published in the **Federal Register** on July 20, 2001, Customs set forth, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111), a list of Customs brokers whose licenses are cancelled. The wrong Treasury Decision (T.D.) number was inadvertently assigned to the document. This document corrects that error by redesignating the document as T.D. 01–52.

Correction of Publication

In the **Federal Register** issue of July 20, 2001, in FR Document 01–18163, on page 38053, in the third column, correct the line above the title of the document which sets forth the T.D. number to read as set forth above.

Dated: July 20, 2001.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 01–18587 Filed 7–25–01; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Fall Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

Deadline: October 1, 2001.

Notification: March 1, 2001 (Note: new notification date).

DATES: Application Material Available on Request.

Receipt of Application: October 1, 2001.

Notification Date: Late March 2002.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program • Unsolicited Grants, 1200 17th Street, NW • Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), (202) 457–1719 (TTY), Email: grant_program@usip.org

Applications also available on-line at our web site: www.usip.org

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842, E-mail: grant_program@usip.org

Dated: July 18, 2001.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 01–18455 Filed 7–25–01; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, August 15–16, 2001, in room 230 of VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The meeting will convene at 9 a.m. and adjourn at 5 p.m. on both days.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation. The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of their analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

The meeting is open to the public on both days. Those who wish to attend should contact Ersie Farber-Collins of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, prior to August 10, 2001. Ms. Farber-Collins may also be reached at 202–273–7268.

Members of the public may submit written questions or prepared statements for review by the Advisory Committee in advance of the meeting. Submitted material must be received at least five (5) days prior to the meeting and should be sent to Ms. Farber-Collins' attention at the address given above. Those who submit material may be asked to clarify it prior to its consideration by the Advisory Committee.

Dated: July 11, 2001.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 01–18610 Filed 7–25–01; 8:45 am]

BILLING CODE 8320–01–M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2216/P.L. 107–20

Supplemental Appropriations Act, 2001 (July 24, 2001; 115 Stat. 155)

Last List July 11, 2001

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